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Supreme Court of the United States

OCTOBER TERM, 1954

No. 51

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, PETITIONER,

vs.

WESTINGHOUSE ELECTRIC CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 26, 1954

CERTIORARI GRANTED JUNE 7, 1954

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Appendix to Appellant's Brief—Filed January 22, 1953

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Nov. 19, 1951 Complaint filed.

Nov. 19, 1951 Summons issued.

Nov. 21, 1951 Summons returned served with copy of complaint on William Miller, Vice President, for Westinghouse Corp., at Union Bank Bldg., on Nov. 20, 1951, at 1:35 A. M.

Dec. 7, 1951 Motion to Dismiss Complaint filed by defendant.

Dec. 7, 1951 Praecipe for Argument List filed by defendant.

May 26, 1952 First amended Complaint filed; Acceptance of service thereon.

May 29, 1952 Hearing before Marsh, J., on Motion to Dismiss; concluded C. A. V. Trial Memor. filed.

Oct. 2, 1952 Opinion and Order of Marsh, J., filed; Order entered that the complaint in the above entitled action be and the same hereby is dismissed, without prejudice to plaintiff by way of amendment to set forth a cause of action upon which relief can be granted.

Oct. 9, 1952 Motion to Dismiss first Amended Complaint, filed by defendant.

Oct. 29, 1952 Notice of Appeal filed by plaintiff.

Oct. 29, 1952 Cost Bond on Appeal filed. ($250.00—Peerless Casualty Co.)

Oct. 30, 1952 Copy of Notice of Appeal mailed Clerk U. S. Court of Appeals; Letters to counsel of record.

Nov. 24, 1952 Original record on appeal mailed Clerk, U. S. Court of Appeals, Philadelphia, Pa.

[fol. 2] IN UNITED STATES DISTRICT COURT

FIRST AMENDED COMPLAINT—Filed May 26, 1952

1. a. Jurisdiction of this Court over the cause of action herein exists by reason of Section 301 of Title III of the Labor Management Relations Act of June 23, 1947, 29 United States Code, Section 185.

b. Jurisdiction of this Court over the cause of action herein also exists by reason of the Declaratory Judgment provisions of the Judicial Code, 28 United States Code, Sections 2201 and 2202.

2. Plaintiff is an unincorporated association organized and existing under the laws of the United States of America and the Commonwealth of Pennsylvania, and is a labor organization within the meaning and scope of the term "labor organization" as said term is defined in the Labor Management Relations Act of June 23, 1947, 29 United States Code, Section 152. Plaintiff maintains its sole office at 709 Braddock Avenue, East Pittsburgh, Pennsylvania.

3. Plaintiff is affiliated with, and a member of, the Federation of Westinghouse Independent Salaried Unions, an unincorporated federation of labor associations, having its sole office at 600 Grant Street, Pittsburgh, Pennsylvania.

4. Plaintiff brings this action both in its individual capacity and interest as a labor organization, and in a representative capacity in behalf of the employees whom it represents, as more fully set forth hereinafter.

5. Defendant is a corporation of the Commonwealth of Pennsylvania, engaged in the manufacture and sale of [fol. 3] electrical equipment in interstate commerce, and has a principal office at Gateway Building No. 3, Pittsburgh, Pennsylvania.

6. Plaintiff was, on and before April 3, 1951, and has continued to the date hereof to be, the bargaining representative for not less than five thousand (5000) salaried employees at the Defendant's East Pittsburgh, and Homewood, Pennsylvania works, in two bargaining units, to wit:

(*b*) All salaried employees of the Defendant in its East Pittsburgh offices and plants (including offices

and plants at Trafford, Turtle Creek, and Linhart, Pennsylvania) including all junior and senior order clerks in the shipping department, all junior tool designers, associate tool designers, tool designers, and senior tool designers, but excluding telephone maintenance employees and supervisory employees.

(b) All salaried employees of the Defendant in its Manufacturing and Repair Departments and Central District Accounting Department who are located at its Homewood office and plant, except Confidential Secretaries (including the Secretary to the Central District Industrial Relations Representative) and supervisory employees.

7. The employees set forth in paragraph 6 hereof are engaged in an industry "affecting commerce", within the meaning of the said term "affecting commerce" as defined in the Labor Management Relations Act of 1947, 29 United States Code, Section 152.

8. For not less than ten years prior to April 3, 1951, Plaintiff has represented salaried employees of Defendant at Defendant's East Pittsburgh, and Homewood, Pennsylvania works.

[fol. 4] 9. On or about November 1, 1950, Plaintiff, as collective bargaining agent for those of Defendant's employees who are set forth in paragraph 6 hereof, through and in conjunction with its duly authorized agent, the Federation of Westinghouse Independent Salaried Unions, entered into a written contract with Defendant, covering the terms and conditions of employment of said employees, for a period of not less than one year from said date, a true and correct copy of said contract being attached hereto, made a part hereof by reference thereto, and marked Exhibit "A".

10. On or about November 1, 1950, Plaintiff, as collective bargaining agent for those of Defendant's employees who are set forth in paragraph 6 hereof, and in conjunction with its duly authorized agent, the Federation of Westinghouse Independent Salaried Unions, entered into a written contract with Defendant, supplementing the contract set forth in Exhibit "A", a true and correct copy of said

supplemental contract being attached hereto, made a part hereof by reference thereto, and marked Exhibit "B".

11. On or about November 16, 1950, pursuant to and in accordance with the contractual obligations of Exhibit "A" as supplemented by the provisions of Exhibit "B", Plaintiff, and Defendant placed into effect a schedule of minimum and maximum monthly salaries to be paid by the Defendant for each type of salaried job then being performed by the employees set forth in paragraph 6 hereof; said schedule, however, being made effective as of September 18, 1950. A true and correct copy of said schedule is attached hereto, made a part hereof by reference thereto, and marked Exhibit "C".

[fol. 5] 12. On or about April 1, 1951, pursuant to and in accordance with the procedures set forth in Exhibits "A" and "B", as limited by Exhibit "C", Defendant established a specific monthly salary in dollars, for each individual employee in the groups set forth in Paragraph 6 hereof, which specific monthly salary Defendant, under the provisions of Section VI of Exhibit "A", contracted to pay to each of such employees for the work performed by him during the month of April, 1951.

13. On and after November 1, 1950, under and by reason of the provisions of paragraph G of Section VI of Exhibit "A", Defendant was contractually obligated to maintain without reduction, the specific individual monthly salaries set forth in paragraph 12 hereof, unless and until the procedures set forth in said paragraph G were followed and complied with.

14. On or about November 1, 1950, Plaintiff entered into a written contract with Defendant, specifying, *inter alia*, the circumstances under, and periods of time for which the Defendant would be obligated to pay the employees set forth in paragraph 6 hereof, their individual salaries, in the event that any of such employees were absent from work due to sickness or disability. The pertinent and essential terms of said contract were set forth in a certain writing prepared by Defendant in or about the month of December, 1950, and through mutual acquiescence and continuous use by the Plaintiff and Defendant thereafter, said

certain writing was adopted by the plaintiff and Defendant as part of their contract, a true and correct copy of said certain writing being attached hereto, made a part hereof by reference thereto, and marked Exhibit "D".

15. On or about April 1, 1947, Plaintiff, as collective bargaining agent for those of Defendant's employees who [fol. 6] are set forth in paragraph 6 hereof, and in conjunction with its duly authorized agent, The Federation of Westinghouse Independent Salaried Unions, entered into a written contract with Defendant, covering the terms and conditions of employment of said employees, said contract, as supplemented, having been extended, from time to time, to on or about the 31st day of March, 1950, and said contract as supplemented, being attached hereto, made a part hereof by reference thereto, and marked Exhibit "E".

16. In or about the month of July, 1949, under and pursuant to the provisions of paragraph G of Section VI of Exhibit "E", Plaintiff and Defendant adopted certain writings prepared by Defendant as instructions to its accounting departments on interpretations of the contract set forth as Exhibit "E", as expressing and constituting the meaning, intent and purpose of the obligations of the Defendant to pay salaries as set forth in Section VI of said Exhibit "E"; and by such adoption, the detailed provisions of said certain writings insofar as they express the circumstances under which Defendant is obligated to pay salaries, effectively became an integral part of said provisions of Section VI of Exhibit "E". A true and correct copy of said certain writings are attached hereto, made a part hereof by reference thereto, and marked Exhibit "F".

17. By reason and virtue of the entering into of the contract set forth in Exhibit "A" on or about November 1, 1950, and by reason and virtue of the provisions of paragraph H of Section VI thereof, by and between Plaintiff and Defendant, the said parties adopted and incorporated as a necessary and integral part of said contract, all applicable and pertinent interpretations of the contract [fol. 7] set forth in Exhibit "E", including the interpretations covered by said Exhibit "F".

18. On and after about November 1, 1950, and continuing to at least after the month of April, 1951, said Exhibit

"F" continued in effect and in constant use and operation by and between Plaintiff and Defendant, to define the meaning, intent, purpose, and obligation of the Defendant under Section VI of said Exhibit "A".

19. The provisions of the contract set forth in Exhibits "A", "B" and "C", as said provisions are interpreted in Exhibits "D" and "F", were in full force and effect by and between Plaintiff and Defendant, before, on and after April 3, 1951, and their provisions obligate the Defendant to pay all of the employees in the units set forth in paragraph 6 hereof, their full monthly salary without deduction for absence of one day's duration, unless such day's absence was due to furlough, or leave of absence.

20. None of the employees set forth in paragraph 6 hereof had been furloughed by the Defendant, and none were on leave of absence, on April 3, 1951, or at any other time during the month of April, 1951.

21. On April 30, 1951 and at all times thereafter, Defendant failed and refused to pay to a large number, to wit, estimated to be not less than Four Thousand (4000) of the employees set forth in paragraph 6 hereof, their full monthly salaries, having deducted therefrom a proportionate amount attributable to absence from work on April 3, 1951. Plaintiff has no actual records of the exact numbers and the names of the said employees as to which Defendant failed and refused to pay as herein set forth, and which of said employees were absent because of illness or disability, and [fol. 8] pending an examination of Defendant's books and records, the amount of money unpaid is estimated to be not less than Forty-Five Thousand ($45,000.00) Dollars.

22. The failure and refusal of Defendant to pay the said not less than four thousand (4000) employees set forth in paragraph 21 hereof, their full monthly salaries, was in violation and breach of the provisions of the contract set forth in Exhibits "A", "B" and "C" as said provisions are interpreted in Exhibits "D" and "F", and particularly in violation and breach of Defendant's obligations set forth in paragraphs 12, 13 and 19 hereof.

23. Plaintiff has exhausted the provisions of the grievance procedure set forth in Exhibit "A".

Wherefore, Plaintiff prays that your Honorable Court enter judgment against Defendant and in favor of Plaintiff interpreting the aforesaid contract and declaring the rights of the parties thereunder to be as set forth hereinabove; and to compel the Defendant to make an Accounting setting forth the individual names and amounts of unpaid salaries as set forth hereinabove; and to enter judgment against the Defendant and in favor of the individual employees set forth in paragraph 21 hereof, for the unpaid amount of their salaries, for the month of April 1951, together with interest from April 30, 1951, costs, and a reasonable attorney's fee.

Albert C. Shapira, Attorney for Plaintiff, 1208 Law and Finance Building, Pittsburgh 19, Pa.

[fol. 9] EXHIBIT "A" TO FIRST AMENDED COMPLAINT

Agreement

Between

Westinghouse Electric Corporation

and

Federation of Westinghouse Independent Salaried Unions

Introduction

Agreement, entered into as of the 1st day of November, 1950, between Westinghouse Electric Corporation, hereinafter referred to as the "Company," and the Federation of Westinghouse Independent Salaried Unions, hereinafter referred to as the "Federation," acting for itself and on behalf of and in conjunction with its various Affiliates, hereinafter specified, which are hereinafter referred to as the "Affiliates."

Section I—Recognition

1. The Company recognizes the Federation on behalf of and in conjunction with its Affiliates for those units where the Federation or an Affiliate, respectively, through a

National Labor Relations Board certification has been lawfully designated as the exclusive bargaining agent. The units for which the Federation or its Affiliates have been certified and which are included within this Agreement are set forth in the Appendix attached hereto and made a part of this Agreement.

2. Any units composed solely of non-supervisory salary employees in the manufacturing plants or district field area of the Company for which the Federation or its Affiliates shall be lawfully certified by the National Labor Relations [fol. 10] Board as exclusive bargaining representatives, shall, upon assent in writing to this Agreement by such representative, be included in and covered by this Agreement as of the date of certification, except that either party may withhold the application of those portions of this Agreement considered inapplicable to such units by giving written notice to the other party within thirty (30) days of such representative's assent. Such matters shall be resolved by collective bargaining. Other units for which the Federation or an Affiliate shall be lawfully certified may, upon agreement of the Federation, the Affiliate and the Company, be included in and covered by this Agreement.

3. The following definition will determine supervisors excluded from the various certified bargaining units:

> "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section II—Bargaining Committee

The Federation has designated a committee of five of its representatives and the Company has designated a committee of five of its representatives, for the purpose of considering, pursuant to the provisions of this Agreement, all matters relating thereto which said representatives of the Federation and of the Company, respectively,

may deem to be Company-wide and generally applicable to the various certified collective bargaining units. Either [fol. 11] party may at any time change said representatives, provided that neither party will be represented by more than five representatives.

Section III—Cooperation

1. The Company and the Federation recognize that mutual respect and confidence will aid greatly in carrying out the provisions of this Agreement and will also go far toward bringing about the harmonious relations which both desire. The Company and the Federation further agree that collective bargaining can best succeed in a friendly atmosphere in which both parties bargain in good faith and with an honest desire to understand each other's point of view.

2. The Federation recognizes that it is the responsibility and right of the Company to maintain discipline and efficiency, and agrees that Management shall have the freedom of action necessary to discharge its responsibility for the successful operation of the Company. These responsibilities and rights of the Company do not in any way limit any other specific provision of this Agreement. The Federation and the Company agree to administer the provisions of this Agreement in good faith.

3. The Company agrees that it or its supervisors or other employees will not discriminate against any employe because of membership or activities in the Federation or the Affiliates.

4. The Federation and the Affiliates agree that neither they, their officers, their members, nor persons employed directly or indirectly by them, will discriminate against any employe. The Federation and the Affiliates agree not to solicit members, dues or funds during the working hours of employes involved.

[fol. 12] Section IV—Consideration

This Agreement evidences the understanding reached through collective bargaining between the Company and the Federation. Both parties share the belief that publica-

tion of these provisions will tend to eliminate misunderstanding and promote accord, and the Federation and the Company will work in unison to that end. The Company will, upon execution of this Agreement, or any local supplements, provide a reasonable number of copies to be made available to interested persons upon request.

Section V—Collection of Dues

1. The Company will deduct, upon written and signed employe authorizations furnished to local Management on a form approved by the Company, from the employe's pay his Affiliate dues for each month in the amount authorized, and shall promptly remit same to the Affiliate.

2. Standard dues as established by the Federation are generally $1.50 per month. Changes in present established dues by the Affiliate will be made effective only after a thirty (30) day written notice to the Company (local Management) and the presentation of new written and signed employe authorizations.

3. Deductions for employes paid monthly will be started within the month provided the authorization is received by the Company not later than the sixth working day of the month. For employes paid weekly, all authorizations received by the last Friday in the Westinghouse payroll accounting month will be included in the deductions for the following month.

4. Deductions will be made from the first pay of the month in the case of weekly payrolls and from the end of [fol. 13] the month pay in the case of monthly payrolls. If a member does not receive pay during the month, dues for that month will not be deducted by the Company from the pay in any subsequent month. Dues deductions will be automatically reinstated for employes returning to work after leave of absence or sickness, providing their authorizations remain in effect.

5. Collection of any back dues owed at the time of starting deductions for an individual will be the responsibility of the Affiliate and will not be the subject of payroll deduction unless such delinquency is a result of an error by the Company.

6. Revocation of employe authorization of payroll de-

duction may be effected by written notice by the employe to the Company at least one month prior to the desired effective date.

Section VI—Salaries

A. Salary Schedules

(1) Salaries will be paid according to a local schedule based upon the classification system in each bargaining unit. The place on the schedule of each position will be in relation to other positions in the bargaining unit and in reference to the lowest and the highest paid positions.

(2) Any employe will, unless otherwise mutually agreed upon, receive a salary rate within the established rate range and the salary paid will be based on merit.

(3) All changes for any reason in an employe's position or rate after hiring, except separation, will be effective the first of a payroll period. The Affiliate will [fol. 14] be advised of any change in the classification of an employe's position before the individual is notified. When the Affiliate representatives question the proposed change the change will not be made effective for at least two working days, to allow a period for further study and discussion. The classification may then be made effective and a grievance may be filed.

B. Position Description and Evaluation

(1) The Federation agrees that the preparation of position descriptions and evaluation of new or changed positions are functions of Management. However, a new or an existing description and/or evaluation will be reviewed at any time upon request by the Affiliate.

(2) The Affiliate president will be presented with new position descriptions and their evaluation before they are made effective. The Affiliate president will be notified at least fifteen (15) days before changed descriptions and/or re-evaluation of existing positions become effective. Questions on the description or evaluation of a new or changed position which cannot

be resolved before the changes become effective may be processed as grievances under the grievance procedure.

7. Group Leader Remuneration

(1) A group leader is a non-supervisory employe who is a working member of a group, without disciplinary authority, who works under a minimum of supervision, who regularly leads, instructs, and guides employes in the group, and who generally allocates the work.

(2) The formation, division, or discontinuance of groups and the selection of a group leader will be determined by local Management after discussion with the Affiliate representative.

[fol. 15] (3) In selecting group leaders, the ability to organize and direct a group will be the deciding factor, with seniority being the next consideration.

(4) Some salary positions may of necessity include a minor amount of work which may normally be recognized as group leading where groups are not considered necessary.

(5) When an employe is assigned the duties of a group leader by local Management, he will be paid in accordance with the schedule set forth in paragraph (6). Any questions concerning the payment of employee for such duties may be made the subject of a grievance.

(6) Group leaders' remuneration depends on the base rate of the group leader and the size of the group. No group of more than twenty (20) exclusive of the leader will be formed. Additional compensation for group leaders will be based on the following schedule:

Schedule

Size of Group, exclusive of the leader	Addition to Base Rate
2 to 5	5%
6 to 10	7.5%
11 to 20	10%

(7) When the size of a group is increased or decreased for a period of more than three (3) months, it will be presumed that there has been a change in the group's usual or normal size sufficient to effect a change in the addition to base rate for group leading, and the rate of additional payments shall be changed in accordance with the schedule. The effective date of the change in group leader remuneration shall be the beginning of the payroll period following the end of such three (3) months period.

[fol. 16] (8) When a group is formed, divided, or discontinued the effective date of the change in group leader remuneration shall be the beginning of the payroll period following the change.

D. Salary Re-Rates

(1) Salary rate increases are based on merit, including the employe's capacity to handle the range of work of his position classification, his quality and quantity of work, cooperativeness and reliability and experience. Any merit increase will be of such amount as to make his rate commensurate with his performance as related to these factors.

(2) Salaried employes whose work is satisfactory will receive not less than 10% above the minimum of the rate range not later than the first of the seventh month after employment. An employe transferred to a higher class position, whose work performance justifies it, will receive, not later than the first of the seventh month after transfer, an increase to at least 10% above the minimum rate of the new position. An employe whose rate before transfer is above the minimum of the new classification and whose work performance justifies it will receive a merit increase within the rate range not later than the first of the seventh month after transfer. When an employe is upgraded to a higher position in the same occupation performing similar work in the same department consideration will be given for an increase at the time of upgrading if the employe's capacity to handle the range of work of this new position classification, his quality and quan-

tity of work, cooperativeness and reliability and experience merit the increase.

[fol. 17] E. Night Turn Bonus

Employes working night turn will receive an extra compensation of 10% of their earnings on night turn, when the regular quitting time is after nine o'clock in the evening (9:00 P. M.) and up to and including nine o'clock (9:00 A. M.) of the following day.

F. Reporting for Work

Employes who report to work at Management's request on regular furlough days and at times not regularly scheduled will be granted a minimum of four (4) hours of work or equivalent pay, subject to details in local supplements. If the employe has qualified for overtime in accordance with the overtime provisions of this Agreement, extra remuneration as provided in Section X—Overtime—will be paid for hours not worked.

Note: The foregoing provisions will not apply in the case of an emergency such as fire, flood, power failure, or work stoppage by employes in the plant.

G. Salary Reviews

(1) The salary review is an inspection of salary rates to establish the proper fulfillment of the provisions of paragraph D of this Section and to determine that salary rates are currently consistent among employes in a given position in relation to their quality and quantity of work, cooperativeness, reliability and experience.

(2) The effective date of any rate adjustments agreed upon at the rate review will be scheduled for the first of the month following the period scheduled for the unit rate review.

(3) Salary reviews will be held semi-annually unless, due to existing circumstances, it is thought advisable [fol. 18] by the Affiliate and local Management either to change or omit the schedule review. Since rate

schedules are based on work performed, Management should give thought to the correctness of the employe's classification when preparing the review sheets. The procedure for such reviews is as follows:

(a) At least four copies of the review sheets prepared as of the month preceding the review, will be completed by the first of the month in which the review is scheduled and a copy will be given to the locally designated Affiliate representative.

(b) Employes within a basic unit or sub-division thereof are to be listed by position, and then in alphabetical order within a position group. The position name, number and rate range will be entered on the sheet, above the names of employes in a given position.

(c) Sufficient information should be entered in the "remarks" column to explain any special cases or conditions.

(d) Not more than three representatives of the Affiliate will review the sheets with Management's representatives. An officer or representative of the Federation may attend the review.

(e) All recommendations agreed upon at the review, including the new base rate and the effective date, will be entered on the review sheets before completion of the review.

(f) A list of the cases arising during the review, on which further consideration is desired, will be made up by Management. This list, after further consideration, will be discussed by the group making the review. If necessary, any special cases on which [fol. 19] a decision cannot be reached will be submitted to the Negotiating Committee of the Affiliate for discussion with local Management. If any of these cases are not resolved by the parties, the individual's case may be made the subject of an appeal grievance.

(g) The review sheets are to be numbered consecutively and the district representative, or an officer of the Affiliate, and the Management representative,

will sign the original of each sheet, indicating that the review of the sheet is completed.

(h) The original or Master copy of the review sheets is to be sent to the Industrial Relations Department when the review is completed. In District office locations, Management's copy is to be retained by the District Manager.

H. Information

(1) Information to the Federation and Affiliate

That portion of Company instructions contained in the Company's Industrial Relations and Accounting Manuals (Part 6) which covers (a) government orders and laws affecting employes and dealing with wages, hours, and working conditions, and government interpretations of such orders and laws, or (b) instructions or interpretations of this Agreement, will, upon issuance by the Company, be sent to the Affiliates and the Federation.

(2) Information to the Affiliate

Local Management shall furnish the Affiliate involved with (a) copies of all general interpretations by local Management of the information furnished under Paragraph (1) above, and (b) general interpretations of local supplements. The Affiliate will be furnished, periodically, with lists of employes transfered, hired, [fol. 20] rehired, and released. The Affiliate will be advised by local Managements as to the names of their authorized representatives for the administration of this Agreement.

(3) Information to local Management

Local Managements of the Company are to be kept advised by the Affiliate as to the names of their authorized representatives.

(4) Information to Employes

Information will be given an employe concerning his employment status at time of employment, upon

change in position, change in rate, transfer between departments and granting of a leave of absence. Notification of change in employment status will be prepared at the same time the supervisor initiates the Authorization for Change in Salary and Employment Rolls, and will be given to the employee not later than the end of the pay period in which the change is made.

Section VII—Hours of Work

1. The standard basic work week is forty (40) hours based on eight (8) hours per day, five (5) days per week, Monday to Friday inclusive. An employe's work day is the twenty-four hour period beginning with his regularly assigned starting time of his work shift, and his day of rest starts at the same time on the day or days he is not scheduled to work. His work week starts with his regularly assigned work period on Monday.

2. Local conditions may make desirable a basic work week different from the standard basic work week for all or a portion of the employes. Such variations will be a matter for local negotiations. Unusual situations may re- [fol. 21] quire modification of the established work schedules in the different units which may warrant special wage payment provisions which will be negotiated locally. The schedules of hours for the established shifts in the bargaining units are contained in the local supplements.

3. Different methods of attendance control are employed throughout the Company. The method used is determined by local situations and is designed to control local problems and is a subject for local collective bargaining.

4. In computing hours worked on late arrivals, early departures and for overtime in connection with attendance control, an employe will be credited with time worked from the start of the one-tenth hour interval in which the recorded starting time falls, and to the end of the one-tenth hour interval which the recorded time of departure falls. Where starting or stopping times are shown on the pass, entrance before and exit after the indicated time will not be credited. Elapsed hours will be computed in terms of hours and tenths of hours.

Section VIII—Leave of Absence

1. The term "Leave of Absence" applies to a continuous period of thirty (30) days or more away from work without pay where the intent is to reinstate the employe at the expiration of the leave, subject to the prevailing conditions at that time, his return to work within the period of the leave of absence, and qualification under the usual employment standards including a physical examination. Seniority credit will be given for periods covered by a leave of absence.

2. An employe may request a physical examination before taking such leave of absence. Physical defects will be recorded and brought to the attention of the employe. [fol. 22]' Physical defects, so recorded, will be given consideration by the Medical Department in determination of medical standards for returning to work at the end of the leave of absence period.

3. The request for a leave of absence will be considered on the basis of production requirements, a satisfactory performance record, the reason for the request, and the length of service of the employe.

4 Where a request for leave of absence is made for a period of more than three months, the leave will be granted for ninety days and consideration may be given to an extension at the termination of the ninety day period. In no case will the total period exceed twelve months, except as outlined below.

5. Upon written request of the Affiliate or the Federation, an employe elected to an office of the Federation or the Affiliate will be granted the usual leave of absence, without losing seniority, not to exceed one year, unless an extension is granted. The determination as to whether such an extension will be granted will be reached through collective bargaining between the Federation and the Affiliate and Management, but in no case shall such leave or leaves of absence or any extension thereof total more than three (3) years. Such an employe, returning to his former position, will receive a rate commensurate with his rate immediately prior to his leave of absence.

Section IX—Seniority

1. Probation Period

A. A new employe shall be on a probation period until he has completed six months of satisfactory employment.

[fol. 23] B. The employe shall be considered on trial during this period.

C. Upon completion of the probation the employe will receive service credit for the probation period.

D. Employes during this probation period will not be eligible for upgrading or transfer except by agreement between the supervisor and the Affiliate representative.

2. Seniority Credit

A. Seniority credit for employes will be established in local supplements.

B. An employe on leave of absence is not on the active roll, but will accumulate service during leave of absence. An employe on furlough is on the active roll and will accumulate service while on furlough. An employe laid off is not on the active roll, will not accumulate service while laid off, and is for all purposes considered as separated from the employ of the Company, but will have the right to be placed on the Inactive Seniority List and such other rights as are provided in this section.

C. An effective service date for each employe will be established at the time of his reemployment or transfer to the bargaining unit. Credit will be granted for previous service as prescribed in Paragraphs A and B of this sub-section 2 in establishing the effective service date for the employe.

3. Inactive Seniority List

A. The names of those laid off, except employes laid off during their probation period, will be placed on the Inactive Seniority List.

[fol. 24] B. The names of employes who voluntarily

quit, who are released, or who are discharged for cause will not be placed on the Inactive Seniority List.

C. When a job is available for a former employe on the Inactive Seniority List, he will be notified as established in local supplements and the position will be held open for five working days from the date of mailing of the notice. If the employe does not report within the five day period his name will be removed from the Inactive Seniority List. If however, within a further ten working day period the employe reports and submits satisfactory evidence that he was unable to report during the five day period, his name will be returned to the Inactive Seniority List and he will be notified when work is again available. Where the person to be rehired is employed by another employer at the time he reports, arrangements will be made whereever possible to permit sufficient time to give necessary notification to such other employer.

D. Former employes will have their names removed from the Inactive Seniority List:

(1) When he has been on the inactive list for a period longer than shown in the following table:

Service less than 3 years—1 year
3 years but less than 5 years—2 years
5 years but less than 8 years—3 years
8 years but less than 10 years—4 years
10 years and over—5 years

(2) When he refuses to accept a job of the same or higher salary level as the job held at the time of his lay-off and which he is able to perform with only such training as an employe with previous satisfactory experience on such job would require.

[fol. 25] 4. Return of Employes to Bargaining Unit

A. An employe who left a position which is within the bargaining unit, or a position which, if presently existing, would be within the bargaining unit, will be returned to the bargaining unit with the same seniority

credit as when transferred out, plus credit for the period of Company service out of the bargaining unit.

B. The provision in the above paragraph will not apply to non-supervisory employes returning from bargaining units represented by other bargaining agents unless such other bargaining agents have agreed to accord corresponding treatment to employes returning to work in such units.

C. An employe returning from leave of absence, disability, or from a position outside the bargaining unit will be placed by agreement with the Affiliate or will replace the least senior employe in his former position in the same seniority unit, unless such position no longer exists or is held by a more senior employe. In either of such events, the returning employe will be placed in a position under the local reduction in force procedure as if he had been replaced in his former position.

5. Seniority Units

A. The composition of seniority units, which may consist of the certified bargaining unit or a sub-division thereof, shall be negotiated locally and shall be described in local supplements.

B. Seniority for purposes of an increase or decrease in force will be considered equal if employes in question have effective service dates within a thirty (30) [fol. 26] day period. In plants where the effective service dates of a considerable number of employes are concentrated within short periods this provision may be modified by local supplement.

6. Increase in Working Force Procedure—Upgrading and Transfer

A. Within procedures established locally, upgrading will be made on the basis of the effective service date of the employe if the employe's occupational experience, education, and suitability indicate he can acceptably do the job.

B. Positions in lower classified salary levels (not requiring occupational skills) will be filled on the basis

of effective service date with the department or seniority unit as determined locally.

C. Positions in other classifications not covered in paragraph B above will be filled (1) from satisfactory employes who formerly held the specific positions in the department and as a result of a recent reduction in activity have been downgraded, transferred to other work in the unit, or are currently on the Inactive Seniority List; or (2) satisfactory employes will be upgraded within their occupations. Local procedure will be established to provide an opportunity for transfer of satisfactory employes to positions for which they are qualified by occupational experience, education, and suitability.

D. Employes will not normally be considered for upgrading or transfer to a position other than within their occupation in their department within a period of six months following hiring, rehiring, transfer at their request or upgrading.

[fol. 27] E. Additional employes will then be hired or transferred from outside the bargaining unit. Such additional employes will not be hired or transferred into the bargaining unit while former employes, willing to take the job, rema-n on the Inactive Seniority List unless they have superior qualifications to employes remaining on the Inactive Seniority List.

7. Decrease in Working Force Procedures

A. Employes will be permitted, in local reduction in force procedures, to displace other employes only if the employe is considered to be able to satisfactorily perform the work with only such training as an employe with previous experience on such work would require.

B. Differentials in effective service dates required before one employe may replace another under varying conditions will be established in local reduction in force procedures. Such procedures will keep replacements and transfers to a reasonable minimum consistent with the efficient operation of the Company.

8. Notice Periods

A. Employes laid off because of lack of work shall receive the following advance notification:

(1) Over one year of service—2 weeks
(2) Less than one year of service—1 week

B. Employes released shall receive the following advance notification:

(1) Over one year of service—2 weeks
(2) Less than one year of service—without notice

C. Employes discharged for cause need not be given advance notice.

[fol. 28] D. In the event of a layoff or release, the Affiliate representative shall be notified before notice is given to the employe. In the case of discharge, the Affiliate representative will be notified with the reasons therefor within one working day after the incident causing the discharge.

9. Furloughs

When furloughing of employes becomes necessary, the local representatives will receive such reasonable advance notice as is practicable under the circumstances. Furloughs are of three (3) types:

(a) Regular Furloughs are a number of days off per week or per month without pay given employes as a part of the program of sharing work in lieu of a reduction in force. Temporary reductions in activity are bridged through furloughs. When there is other than a temporary reduction in activity employes will be laid off to maintain a full work week. When employes with long service are being laid off the parties may locally negotiate a temporary modification of this procedure, including the use of furloughs, and the period such modification is to apply.

(b) Emergency Furloughs are periods off without pay resulting from material shortages, power failures, labor disturbances or other conditions where transfer of employes to provide work is not feasible. When

such conditions are anticipated, the subject will be discussed with the Affiliate Negotiating Committee.

(c) Disciplinary Furloughs are time off without pay as a punishment for misconduct of an employe.

10. Graduate Students and Trainees

It is recognized that practical work experience is necessary for the proper training of Graduate Students. Work [fol. 29] assignments, not to exceed six weeks each, may be made with the understanding that other employes will not be laid off or furloughed as a result of such assignments. Graduate Students will not be considered in the bargaining unit during their training period. Provisions covering other trainees will be contained in local supplements.

11. Seniority Preference

A. At the written request of the Affiliate during their term of office, (1) Federation Officers, (2) Affiliate Officers, (3) Affiliate District Representatives, and (4)Affiliate Group Representatives will be given seniority preference sufficient for them to retain a position in their occupation or line of promotion in their particular unit of representation. The bargaining unit will be considered as the unit of representation of Federation and Affiliate officers. Where more than one officer or representative may be affected in the same reduction in activity and their units of representation overlap, consideration shall be given in the order they are listed in the first sentence above. The written request of the Affiliate will establish the order of ranking of the Officers of the Affiliate. Officers and representatives must be qualified in accordance with the reduction in force procedure for any position to which they are transferred under this provision.

B. A group of employes, not to exceed 5% of the current number of employes on the most recent rate review sheets or two (2) employes, whichever is greater, in the bargaining unit receiving a salary of $250.00 a month ($58.75 a week) or more, will be given seniority preference as set forth below because of outstanding abilities in certain work or because of

[fol. 30] unusual ability for training purposes to fill positions either in the plants or in field locations.

1. Employes having outstanding abilities in certain work and employes selected because of unusual ability for training purposes to be listed must receive a salary of not less than $250.00 a month ($58.75 a week).

2. The Affiliate will be given a list of the employes to receive seniority preference and such list will be kept up-to-date by local Management. The list will include for outstanding employes the present position number, and for trainees the position for which the employe is to be trained. The list of employes in a given department of a division (engineering, accounting, manufacturing, etc.) or any other unit as may be negotiated locally will not exceed 10% of the employes or two (2), whichever is greater in the department or unit. The lists of employes, and any changes therein, will be discussed with the Affiliate before being made effective and other essential information will be supplied. Objections may be presented through the grievance procedure.

3. Employes on this list may be upgraded or transferred to an open position for the purpose of specialized training or because of outstanding abilities in certain work.

4. An employe on the seniority preference list will be given seniority preference at the time of a reduction in activity sufficient to enable him to retain his position so long as such work remains, but when the work no longer remains he will be given preference for another related position in the same salary level or successively lower levels if he has training [fol. 31] for such a position. In such instance the ability, the purpose for which he is being retained or trained and the relative length of service of the employe on the list, will be considered before a decision is reached that he replace a long-service employe.

5. If the name of any employe being trained is removed from the seniority preference list because

seniority preference is no longer required, the employe will be placed in accordance with local seniority procedures. When an open job exists under these circumstances it will be filled in accordance with all applicable seniority provisions. However, the names of employes who have been trained and are on the position for which they have been trained may be removed from the seniority preference list, and they shall remain on their job thereafter with the same seniority status as though they had never been on such list. The names of outstanding employes upgraded or transferred to open positions may be similarly removed from the seniority preference list after they have been on such list for one year.

6. The monthly and weekly salaries referred to in this Paragraph B are on the basis of a 40 hour weekly schedule—proportionately lower figures will apply where the weekly schedule is less than 40 hours.

C. Questions of conflict between seniority preference granted in Paragraph A and Paragraph B will be resolved by agreement between the Affiliate and local Management.

D. Employes working on special assignments of limited time duration that would be materially affected by a replacement and employes performing specialized work may be temporarily retained on their job [fol. 32] until the assignment is completed or through training or other means an adequate replacement can be made. These situations are to be negotiated locally.

Section X—Miscellaneous Procedures

1. Jury Duty

Salaried employes will be paid their regular salary while on jury duty but will be expected to report for their regular duties when temporarily excused from attendance at court. No salary will be paid during furloughs or days that would have been furloughs while on jury duty.

2. Security Regulations

The Company has certain obligations in its contracts covering government work which pertain to security. Therefore, if any government agency concerned with the Company's security regulations advises the Company that any employe of the Company covered by this Agreement is restricted from work on or access to classified information or material, the Federation or its Affiliates will not, after having seen the order, present or prosecute a grievance because the Company restricts such employe from such work or from access to classified information or material, but shall not be precluded from prosecuting a grievance concerning any action of the Company which exceeds security requirements.

3. Military Service

Employes drafted or called into military service will be granted a military leave of absence. The leave of absence will cover the period of such required military service and will be considered as continuous employment.
[fol. 33] The employe must apply for re-employment within ninety days from the date of honorable discharge (or the termination of the required period of military service). An employe so applying will be reinstated in his former position or a position in the bargaining unit which he left on the basis of his seniority, under the provisions of this Agreement, providing the employe complies with the following conditions:

a. Application for reinstatement is made within the time period provided above.
b. Official discharge papers are presente .

Employes reporting, as provided for in the above provision, who are not qualified to perform the duties of their former position will be given special consideration, and local Management will endeavor to place them on suitable jobs.

An employe so reinstated will be entitled to participate in insurance and other benefits on the same basis as other employes returning from leave of absence.

Section XI—Overtime

Non-exempt Employes

1. Hours worked by non-exempt employes, except hours worked on Sunday, in excess of 8 hours in any day or 40 hours per week, will be paid at an overtime rate of one and one-half times the employe's average earned hourly rate.

2. Absent hours considered as involuntary will be considered as hours worked for determining overtime. Involuntary absences are defined as follows:

a. Funeral or death in the immediate family (includes relatives living in the same household with the employe, or mother, father, brother, sister, or child, who are not of the same household).

[fol. 34] b. Jury duty.

c. Injury or illness of the employe.

d. Furloughs for which deduction from pay is made except in case of disciplinary furlough.

e. Holidays and vacation days.

f. Union activities by elected representatives as contemplated in this agreement.

3. Hours worked by non-exempt employes on Sunday after forty straight-time hours (including involuntary absences) have been worked in the week will be paid at an overtime rate of twice the employe's average earned hourly rate.

4. Hours worked on holidays by non-exempt employes will be paid at an overtime rate of one and one-half times the employe's average earned hourly rate. Such payment is in addition to the employe's salary if the holiday falls within the work week. Monday to Friday inclusive. No salaried payment is made to employes for holidays falling on Saturdays not worked.

5. The above provisions apply to the standard basic work week. Special conditions may require exceptions and local overtime provisions to cover such exceptions. These questions are a subject for local negotiations.

6. The earned rate for overtime purposes will consist of straight-time earnings, including base rate,

night turn bonus, group leader remuneration, and incentive payments.

Exempt Employes

1. Administrative and professional employes, exempt under the Fair Labors Standards Act, will, when agreed upon locally, be issued exempt passes.

2. Overtime hours of exempt employes in District [fol. 35] Field areas will be paid on the basis of scheduled hours as provided in a supplement hereto.

3. Employes who are issued exempt passes shall be paid for extra hours only when scheduled by the supervisor. Incidental overtime worked shall be regarded as casual and a part of the job requirement and not subject to inclusion in schedules. Scheduled overtime will approximate overtime requested or approved by the responsible supervisor. Schedules will be prepared on a monthly basis, in advance, and expressed in terms of equivalent weekly hours. As a general policy schedules requiring Sunday and holiday work should be avoided.

4. Vacation payment will be limited to the basic work week.

5. Payment for scheduled overtime will be in accordance with the following schedules:

Base Salary Rates for 40 Hours	Pay for Scheduled Overtime Over 40 Hours per Week
Up to and including $400.00 per month ($92 per week)	Time and one-half
Over $400 per month (over $92 per week)	$15.00 per scheduled hour ($3.50 per scheduled hour for weekly paid employes) with a maximum payment of $750.00 per month ($173 per week) less 10c for each $1.00 of base rate under $750 per month ($173 per week).

[fol. 36] Section XII—Holidays

1. Holidays observed by the Company will be New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. When the necessary arrangements can be made and it is satisfactory to the Affiliate and local Management, another day may be permanently substituted for Washington's Birthday through a provision in the local supplement.

2. When a holiday falls on Sunday, it will be observed the following Monday. Basic hours on a holiday will be credited as time worked for salaried employes, when the holiday is observed within the basic work week of the individual.

Section XIII—Vacations

1. The vacation periods of employes will be arranged so that they do not unreasonably interfere with the operation of the plant or office. Insofar as practical, the employe will be permitted to take a period satisfactory to him. Where more employes in the same position desire the same vacation period than can be permitted to be absent, preference will be based on service credit.

2. Certain plants or offices will shut down each year for vacation purposes, and the time of the year for shutdown will be a matter for local negotiations. In these locations the vacation will run concurrently with the shutdown period. Employes who become eligible for vacations subsequent to the annual shutdown, but before the end of the year, will be granted vacation pay when they become eligible, if they were absent during the shut-down period, without additional time-off for vacation. It is recognized that some employes will be requested to work during the shut-down period.

[fol. 37] 3. Salaried employes will be granted vacations as follows:

A. Over one (1) year of total employment but less than twenty (20) years with three (3) months continuous employment immediately preceding the time of starting vacation—2 weeks.

B. Over twenty (20) years total employment with three (3) months continuous employment immediately preceding the time of starting vacation—3 weeks.

4. Salaried employes working on an incentive basis will be paid vacations at their current base rate plus the average weekly incentive bonus for the preceding calendar quarter.

5. In the case of a salary employe where the one year of service immediately preceding the vacation period is a combination of hourly and salary and includes at least three months on the salary roll (not necessarily continuous), the vacation will be the same as for all other qualified salary employes. An employe will be entitled to vacation for which he would have been entitled as an hourly paid employe up to the time he has completed 3 months of service on the salary roll. If not qualified for vacation at the time of transfer, he will be entitled to a vacation on hourly basis if he qualifies before completion of 3 months of service on salary, and after completing his three months of service he will qualify for any difference between salary and hourly paid vacation hours providing the 3 months are completed on or before December 31 of the year in which the transfer occurs.

6. When an established holiday or its observance falls on a normal week day within the vacation period of a salary employe, an additional vacation day will be granted.

[fol. 38] 7. It is the responsibility of Management to see that all employes take their alloted vacations.

8. When an employe is removed from the active payroll for any reason, except disciplinary discharge, payment for vacation not taken for the current year will be made if the employe has qualified for vacation.

Section XIV—Bulletin Boards

The Company will permit the use of bulletin boards for the purpose of posting Federation and Affiliate notices or other information of interest to Federation members. All such notices will be subject to the Management's approval and arrangements made by local Management for posting.

Section XV—Settlement of Disputes

1. Responsibility

A. During the life of this Agreement, the Federation and the Affiliates, except, however, as provided in Paragraph B of this section, will not cause, or sanction their members to cause or take part in, any strike (including sit-downs, stay-ins, slow-downs, or any other stoppage of work which restricts or interferes with production), nor will the Company lock out any employe. It is the intention of this Agreement, with the single exception provided in Paragraph B of this Section, to prohibit all lock outs by the Company and all strikes; and, without limiting the generality of the foregoing, to prohibit strikes in connection with demands for contractual additions or changes or for general salary increases, either locally or Company-wide. The Federation agrees that, upon receipt of notice that a strike (as defined above) in violation of this Agree- [fol. 39] ment is in progress, or is about to begin, it will immediately take all appropriate steps to terminate or prevent such strike.

B. The Federation or the Affiliates will not cause or officially sanction their members to cause or take part in any strike (as defined in Paragraph A) nor will the Company lock out any employes or transfer work from any location, because of a dispute which is within the proper scope of the grievance procedure provided in this Agreement or the applicable local supplement, until such times as the grievance procedure has been fully exhausted, and in the event of a strike, it is authorized by the Federation. The Federation will notify the Company at least seven (7) days before it grants authorization to the Affiliate to strike.

C. Employes taking part in any strike in violation of this Agreement will be subject to disciplinary action.

2. Grievance Procedure

A. The Company agrees to bargain with the appropriate representatives of the Affiliate or the Federa-

tion regarding rates of pay, wages, hours of employment, or other conditions of employment. Matters deemed by the Federation and the Company to be Company-wide and generally applicable to the certified bargaining units shall be subjects for negotiations between the bargaining committees of the Federation and the Company. Matters not deemed to be Company-wide and generally applicable to the various certified bargaining units and which are not grievances, as hereinafter defined, shall be subjects for negotiations between the bargaining committees of the Affiliate and local Management.

[fol. 40] B. The term grievance is defined to mean (a) any dispute as to the interpretation, application, or claimed violation by the Company, the Federation, or an Affiliate, of this National Agreement, its supplements or any local supplement covering the bargaining unit involved, (b) any subject that the National Agreement provides shall become a grievance, or (c) questions involving discipline, release or discharge of employes in the bargaining unit.

C. Local Grievance Procedure:

(1) It is the intention of this Agreement that local Management and the Affiliate shall make every effort to settle all grievances at the local level.

(2) The immediate Affiliate representative and the immediate supervisor will handle grievances at the first step. There will not be more than three steps in the local grievance procedure and the number of steps, the maximum number of representatives of the Affiliate at the various steps, the designation of the Management and Affiliate representatives at the second and third steps, and any other details will be included in local supplements.

(3) The Affiliate representative will present the written grievance to the designated local Management representative at each step. A meeting will be held promptly at a mutually convenient time to discuss the grievance, an answer will be given by the

Management representative following the final meeting (if more than one meeting is necessary), within a maximum of three working days at the first step, seven working days at the second step, and ten working days at the third step.

(4) The above time limits (paragraph 3) at each step may be extended by mutual agreement of the [fol. 41] Management and Affiliate representatives designated for that step of the grievance procedure. If extension is not granted and the time is exceeded, the grievance may be advanced to the next step of the procedure.

(5) The answer will be given to the designated Affiliate representative at each step. If the answer is satisfactory the Affiliate representative will so indicate on the grievance form and return one copy to the Management representative answering the grievance. If the answer is unsatisfactory the Affiliate representative will so indicate on the form, attach the reasons why he considers the answer unsatisfactory, and may forward it to the designated Management representative at the next step.

(6) Company grievances may be originated at any step of the grievance procedure and thereafter the procedure outlined in paragraphs (2), (3), (4), and (5) will apply except that the action outlined for Management representatives and Affiliate representatives will be interchanged.

D. Appeal Grievance Procedure:

(1) Should the Management and Affiliate fail to adjust a grievance arising under this Agreement or the local supplements, such grievance may be referred to the headquarters of the Company and the Federation. The Federation and the Company shall submit to each other any grievances referred to them by the Affiliate or the local Management, and during the month following the representatives of the Company and the Federation shall meet in an effort to settle such grievances that have been referred to each party and an answer will be given promptly.

[fol. 42] (2) Grievances forwarded by the Affiliate to the Federation or by local Management to the Company's headquarters for consideration as appeal grievances shall be forwarded in duplicate. Two copies of any supporting material shall accompany the grievance.

(3) If local Management's final reply to a grievance of the Affiliate is unsatisfactory, the Affiliate, after notifying local Management in writing that it does not choose to refer the grievance to the national appeal level, shall be considered as having fully exhausted the grievance procedure. The Federation, however, may choose to take such grievance to the national appeal level, in which case the Federation will so inform the Company's headquarters in writing. When an Affiliate refers a grievance to the national appeal level through the Federation or if the Federation takes such grievance to the national appeal level, the grievance procedure shall be considered as having been fully exhausted only after the Federation advises the Company that the Company's reply at the national appeal level is unsatisfactory.

E. Should the Federation and the Company fail to settle any of such grievances, then the parties may consider referring such matters to an impartial umpire or board by mutual agreement.

F. Neither party's reply to a grievance of the other party will be considered final at any level of the grievance procedure (local or appeal) and the grievance closed, if written notification to the contrary is not received within thirty (30) days of the date of such reply.

[fol. 43] Section XVI—Payment for Negotiating Time

It is agreed that negotiating time will be kept to a minimum commensurate with good practice and in the interest of efficiency. Unless of such nature as to be termed urgent, negotiating time will be scheduled by Management and the

Federation or Affiliate representatives in advance and in such manner as to least interfere with regular work schedules.

The following procedure will apply:

A. Officers and other representatives of the Affiliates and/or the Federation, whether exempt or non-exempt employes, must give notification to and secure a time report from their respective supervisors when stopping work to conduct union business, whether or not with Management (including, without limitation, investigation of complaints that may lead to grievances, handling and adjustment of grievances and attendance at meetings of Union committees) and must return the report to the supervisors when again ready to start work.

B. Payment will be made by the Company at the representative's salary rate only (whether exempt or non-exempt employe) for such time reports covering time spent in:

1. Investigation of complaints that may lead to grievances.

2. Handling and adjustment of grievances.

3. Attendance at meetings with Management within the employe's basic work week.

4. Attendance at meetings with Management outside the employe's basic work week were such attendance is not voluntary.

[fol. 44] Time covered by the above reports (sub-paragraph B) will be considered as hours worked for the purpose of determining overtime.

C. The Affiliate will reimburse the Company for all such payments except payments on time reports covering (a) meetings held in the plant during the regular working hours of the employe which are requested by Management, and (b) rate reviews. The Company may deduct amounts for which it is entitled to reimbursement from any amounts due to Affiliates, and the Affiliates will make up any deficiencies by separate payment. Time reports covering such payments will be furnished to the Affiliates.

Section XVII—Modification

1. This Agreement expresses the understanding of the parties in respect to matters deemed by them to be Company-wide and generally applicable to the various collective bargaining units, and it will not be changed, modified or varied except by a written instrument signed by duly authorized agents of the parties hereto, and any negotiations relating to proposed changes in such provisions will be carried on between representatives as outlined in Section II.

2. All agreements made locally, other than agreements as to settlement of specific grievances, shall be embodied in local supplements to this Agreement, agreed upon by the respective Affiliates and local Managements. Such local supplements shall be in writing and shall cover the procedures for administering the provisions contained in this Agreement and other items of collective bargaining not Company-wide in character and generally applicable to the various collective bargaining units.

[fol. 45] 3. The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that all agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement (except to the extent they are set forth in the Pension and Social Insurance Agreement referred to in paragraph 2 of Supplement I hereto). Therefore, except as hereinafter specifically provided in this Section XVII, the Company and the Federation, for the life of this Agreement, each voluntarily waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject deemed by the Federation and the Company to be Company-wide.

4. The Federation and local Management at each location will, immediately after the execution of this Agree-

ment, enter into or continue local negotiations for the purpose of concluding local supplements to this Agreement covering items which have been customarily included in local supplements at the respective locations. Should the Affiliate and local Management fail to reach agreement on the terms of such a local supplement after having bargained on the matter in good faith, both parties shall be free to exercise any rights they may have, with respect to the bargaining unit involved only, without regard to the limitations contained in Section XV of this Agreement.

5. The Company and the Federation agree that neither of them, nor any Affiliates, will request consideration of any proposed changes in or additions to this Agreement or any local supplement to this Agreement, including any general salary increase (either locally or Company-wide) [fol. 46] before July 1, 1951, except that the Federation may reopen this Agreement once for the limited purpose of requesting in writing, at any time between April 1, 1951 and April 30, 1951, inclusive, a general increase in salaries of all employes covered by this Agreement. The term "general increase in salaries" means only a general increase to all employes in terms of cents per hour or a percentage of pay, and shall not be deemed to include any other change, addition or increase in economic benefits to employes of any other nature whatsoever. It is further agreed that any contract changes or additions or salary adjustments that may be requested on or after July 1, 1951 will be made on the basis of an effective date not earlier than October 1, 1951, unless an earlier effective date is mutually agreed upon; and that any general increase in salaries pursuant to a reopening of this Agreement between April 1 and April 30, 1951 will be made on the basis of an effective date not earlier than April 1, 1951, unless an earlier effective date is mutually agreed upon. In the event that the Agreement is reopened between April 1, 1951 and April 30, 1951, as above provided, it is understood that the only subject which either party is bound to discuss, by virtue of any provision of this Agreement, is the subject of a general increase in salaries as defined above.

6. When any request is received for a change in this

Agreement or in any local supplement or for a general adjustment of salaries which is made in accordance with the foregoing provisions, a conference will take place within fifteen (15) days for the purpose of considering it.

7. If this Agreement is reopened between April 1, 1951 and April 30, 1951, as above provided, and the Company and the Union fail to reach agreement prior to May 1, 1951 with respect to the Union's request, the Union may strike [fol. 47] in support of its request without violating Section XV or any other provision of this Agreement. In the event of such strike, this Agreement shall continue in effect (subject to the provisions of Section XVIII—Termination) and neither party shall have the right to terminate this Agreement because of such strike unless it continues after the end of the first contract year, in which event either party shall thereafter have the right to terminate this Agreement (unless prior notice of termination has already been given pursuant to Section XVIII—Termination) on not less than one day's written notice to the other party.

8. If the parties do not reach agreement prior to November 1, 1951 with respect to any requested contractual changes or additions or salary adjustments submitted prior to July 1, 1951, or if the parties do not reach agreement prior to the end of any subsequent contract year, with respect to any requested contractual changes or additions or salary adjustments submitted prior to July 1 of such subsequent contract year, the Federation may strike after the beginning of the next succeeding contract year in support of any such requests made by it. Such strike shall not be a violation of Section XV or any other provision of this Agreement, but either party may, upon not less than one (1) day's written notice given to the other during such strike, thereupon terminate this Agreement and all of the supplements and local supplements hereto.

9. The foregoing procedure outlined in paragraph 8 shall also apply with respect to unresolved issues involving local supplements at the end of the first contract year or any subsequent contract year, except that the right to strike shall be limited to the bargaining unit or units involved in the dispute, and either the Company or the

Federation shall have the right to terminate this Agree-
[fol. 48] ment and all local supplements insofar as they apply to such bargaining unit or units upon giving the other party not less than three (3) days' written notice of such termination during the continuation of such strike.

Section XVIII—Termination

1. This Agreement shall remain in full force and effect for a period of one year from the effective date hereof, and thereafter from year to year (each such year is sometimes referred to herein as a "contract year"), provided that either party may terminate this Agreement at the end of the first or any succeeding contract year by giving the other party written notice of such termination at last sixty (60) days before the termination date.

2. Upon termination of this Agreement, all local supplements to this Agreement shall automatically also terminate. Any such local supplement may also be terminated by any party thereto as of midnight October 31, 1951 or midnight of October 31 of any subsequent contract year during the life of this Agreement, by giving at least sixty (60) days prior written notice to the other party or parties. In addition to the foregoing provisions for termination, which shall apply to all such local supplements, any local supplement or part thereof may also be terminated in accordance with any special termination provision that may be negotiated locally by local Management and the Local and specifically stated in such local supplement.

Section XIX—Exceptions

Exceptions to this Agreement are made with respect to the bargaining units at Hyde Park, Massachusetts, Sturtevant Division. Armistice Day shall be observed as a holiday in such units pursuant to Section XI—Holidays, in [fol. 49] place of Washington's Birthday. This exception may be made the subject of local collective bargaining.

Section XX—Approval and Assents

This Agreement is subject to approval by the Federation and the Affiliates involved; and shall not become binding

upon the Company or the Federation unless the Federation notifies the Company of such approval on or before November 15, 1950.

Westinghouse Electric Corporation, By /s/ Tom Turner, Vice President, Federation of Westinghouse Independent Salaried Unions, By /s/ Leo F. Bollens.

EXHIBIT "B" TO FIRST AMENDED COMPLAINT

Supplement I

Dated the 1st Day of November, 1950

Supplement to Agreement Dated As of the 1st Day of November, 1950

Between

Westinghouse Electric Corporation

and

Federation of Westinghouse Independent Salaried Unions

1. General Salary Increase

The Company agrees to grant a general salary increase to all salaried employes covered by this Agreement on a [fol. 50] forty (40) hour weekly schedule of $4.00 per week (in the case of employes paid weekly) and $17.35 per month (in the case of employes paid monthly), or five (5%) per cent of their regular salary rate, whichever is greater, effective as of September 18, 1950. Proportionately smaller increases will be granted to employes on a weekly schedule of less than forty (40) hours. The maximums of salaried key sheet classifications will be increased by five (5%) per cent. The minimum of salaried key sheet classifications will not be changed. All individual employe rates which are increased by five (5%) per cent, and all maximum key sheet rates, will be rounded out to the nearest one ($1.00) dollar in the case of employes paid monthly and to the nearest twenty-five (25) cents in the case of employes paid weekly.

2. All matters concerning pensions and social insurance are provided for in the Pension and Insurance Agreement entered into between the parties as of November 1, 1950.

Westinghouse Electric Corporation, By /s/ Tom Turner, Vice President, Federation of Westinghouse Independent Salaried Unions, By /s/ Leo F. Bollens.

[fol. 51] EXHIBIT "C" TO FIRST AMENDED COMPLAINT

Association of Westinghouse Salaried Employees

Salary Key Sheet No. 9

Effective September 18, 1950

Series	*Code*	*Minimum*	*10% Above Min.*	*Maximum*
1	1	140	154	186
1	2	140	154	195
1	3	147	162	206
1	4	155	171	216
1	5	164	180	230
1	6	174	191	244
1	7	185	204	259
2	1	196	216	275
2	2	209	230	293
2	3	223	245	313
2	4	238	262	333
2	5	254	279	356
3	1	272	299	380
3	2	292	321	408
3	3	313	344	438
3	4	336	370	470
3	5	362	398	506
4	1	389	428	545
4	2	416	458	583
4	3	446	491	624
4	4	477	525	668
4	5	512	563	716

This key sheet applies to a basic 40-hour week and rates are dollars per month. For shorter work schedules, all key sheet figures are to be in proportion.

[fol. 52] There are four unceded positions:

1-EY-0.0 Drafting Student $155-170-185-200
1-CY-0.0 Learner Stenographer $135
Composite Rates
2-WY-0.0 Hydrogen Gas Plant Operator $266-$373
3-WY-0.0 Power Plant Operator $305-$426

11-16-50

EXHIBIT "D" TO FIRST AMENDED COMPLAINT

Section 7

Division 7G1

Westinghouse Electric Corporation

Manual of Accounting and Industrial Relations Manual

December 1950 Part 6—Industrial Relations Policies and Accounting Procedures

Salary Extension

1. General

a. When a salaried employe is absent from work for an extended period due to sickness or disability, salary payment shall be continued for the following periods:

Less than one (1) year continuous service —*one (1) week*
One (1) or more years continuous service —*one (1) month*

b. The period for which salary payments are continued shall be construed as beginning on first regular working day on which employe is absent and shall continue for one [fol. 53] *(1) calendar week or month (whichever applies) including Saturdays, Sundays and holidays, from the date such absence begins.*

Note: In order to give effect to this change in policy on an equable basis, it shall become effective with those employed on and after December 1, 1950.

c. Upon expiration of the initial extension period, (see par. 1a), if illness or disability continues, employe shall be transferred to Disability Roll unless employe's continuous service exceeds five (5) years and further extension of salary is authorized on form 22501 (see par. 3).

2. Forms

1099 United States information return for calendar year
22501 Request for salary payment
23179 Request for remittance
23546 Authorization for change in payroll—white
W-2 Statement of federal income tax withheld on wages

3. Extended Salary Payments

a. At end of the one (1) month's period (see par. 1) employe's salary may be continued on basis of an additional month's salary for each five (5) years of continuous service prior to date disability began in accordance with par. 4.

b. Number of month's extension of salary developed by formula in par. 3a is maximum allowable in any twelve (12) month period, exclusive of first month's salary allowed after each illness within twelve (12) months from commencement date of first illness for which salary payment is made.

Example:

An employee with twenty-five (25) years' continuous service, absent on account of illness from August 1, is auto-[fol. 54] matically carried on payroll until September 1 and is thereafter eligible to have his salary extended, through use of form 22501, for five (5) additional months, or until February 1. If employe returns to work November 1, having received salary extension pay for two (2) months and is again absent due to illness before end of twelve (12) months from date of first absence (August 1), he will be carried on the payroll automatically for first month of illness and will thereafter be eligible for remaining portion (three (3) months) of his total salary extension time based on service prior to date first absence begins.

c. Compensation for night turn bonus or group leader remuneration will not be included when computing extended salary payments. Authorized weekly or monthly rate on form 23546 shall be used as basis of payment.

4. Form of Request

Quadruplicate copies of form 22501 addressed to payroll location should be initiated by employe's supervisor and approved by executive authorized in 6-2-1G1. Approved original of form 22501 should be forwarded to payroll location as authorization for payment sufficiently in advance of termination of previous salary authorization to permit clearance of request in time for normal payroll preparation. Copy indicating approval should be retained in department initiating the request, copy should be sent to local Industrial Relations representative, and copy forwarded to Chairman, Wage and Salary Administration Committee, Pittsburgh (after payment). Payroll location shall verify that length of continuous service shown on form 22501 has been computed correctly before giving effect to the authorization.

[fol. 55] 5. Period Covered by Request

a. Each request for extended payment will be limited to one (1) calendar month (including Saturdays, Sundays and holidays) from termination date of first automatic one (1) month payment. Each additional month's extension will be a separate request.

Example:

A salaried employe having twelve (12) years of service is absent due to illness beginning October 5, and his salary is continued for one (1) month or up to and including November 4. If before expiration of this time, his condition indicates he will not return to work, a request recommending payment of his salary for an additional month (through December 4) may be forwarded to proper executives for approval. If request is approved and should employe's condition indicate he will be unable to return to work by expiration of period authorized, the executive, based on circumstances involved, may approve a further extension of

salary payment through January 4. If employe has not returned to work at expiration of this third (3rd) calendar month's absence, he should be transferred to Disability Roll. See 6-2-1G1 for procedure regarding payment for partial payroll periods.

b. Employes on extended service (see 6-2-1G1) will be entitled to benefits provided by this section in accordance with their service record including time on extended service, but excluding time on retirement roll (inactive), if any.

6. Salary and Vacation Payment After Death

a. Subject to approval of local executive on form 23546, an employe's salary may be paid for a period of two (2) weeks following date of death.

[fol. 56] b. If deceased employe's period of continuous service exceeds five (5) years, local executive may approve on form 23546 an additional one (1) month base salary providing death was not preceded by an illness of more than one (1) month during which employe was carried on salary roll. Supplemental items—e. g., group leader bonus, shall not be included (see par. 3c).

c. Where deceased employe was eligible for and had not taken all or part of current year's vacation, such vacation payment shall be made in addition to payments listed in pars. 6a and 6b.

d. Date of death should be shown as date of termination of employment on form 23546. Authorization for payments listed in pars. 6a, 6b and 6c should be listed under "Remarks" on form 23546.

Example:

Employe died	3-8-1950
Vacation due	two (2) weeks
Salary extension authorized	two (2) weeks (or two (2) weeks plus one (1) month, whichever is applicable)

e. Name of person to whom such payments should be made shall also be included on form 23546 under "Remarks". Payment of salary extension to the estate of a deceased employe is not recommended. Clearance should be obtained from Wage and Salary Administration Com-

mittee for payment to other than the widow or children of decedent. Request for Committee approval should include information as to why such payment is recommended.

f. Payments listed in pars. 6a and 6b are not mandatory but are subject to discretion of local executive. Payroll [fol. 57] location shall issue form 23179 requesting check drawn on general account fund for full payment authorized or requested under "Remarks" on form 23546 (see par. 6d). Such payments are considered as gratuities and are not to be included in earnings or other payroll records. Payment shall be accompanied by letter of transmittal (similar to Exhibit "A") and copy sent to Vice President, Industrial Relations, Pittsburgh. Local Industrial Relations representative should see that this check and transmittal letter are delivered to recipient, if feasible, by personal contact at time status of benefit plans is discussed (see 6-7-12G1).

7. Payroll Taxes

a. Deduct withholding and social security taxes from salary payments (including salary extension) for period to and including date of death only. Payments made on general account fund voucher (see par. 6) are not subject to tax.

b. Payments for period after death shall not be reported on forms W-2 or 1099 nor shall any taxes be accrued for such payments.

8. Maximum Limitations

a. The above policy is considered equitable from the standpoint of the interests of both the Company and employe, and it is recommended that maximum limitations outlined above be adhered to in order that the establishment of any precedent beyond these limits may be avoided.

b. If payment in excess of maximum limitation (see par. 3) should be recommended, form 22501 should be prepared in quadruplicate by employe's supervisor, approved by executive (see par. 4) and all four copies forwarded with letter explaining circumstances, to Chairman, Wage and [fol. 58] *Salary Administration Committee for approval.*

Chairman, Wage and Salary Administration Committee will inform the interested executive of action taken and, if approved, will route copies in accordance with par. 4.

9. Workmen's Compensation

Where Workmen's Compensation payments are being received amount of salary extension payments shall be reduced by amount of compensation payment (see 6-1-3G1).

Copies to: Union Representatives (Federation, I.U.E. and U.E.)

EXHIBIT "E" TO FIRST AMENDED COMPLAINT

Agreement
between
Westinghouse Electric Corporation
and
Federation of Westinghouse Independent
Salaried Unions

Entered into April 1, 1947

Agreement, entered into this 1st day of April, 1947, between Westinghouse Electric Corporation, hereinafter referred to as the "Company", and the Federation of Westinghouse Independent Salaried Unions, hereinafter referred to as the "Federation", on behalf and in conjunction with its various Affiliates, hereinafter specified and assenting to this Agreement, hereinafter referred to as the "Affiliates".

• • •

[fol. 59] Cooperation—Section III

• • •

The Federation and the Company agree that collective bargaining can best succeed in a friendly atmosphere in which both parties bargain in good faith and with an honest desire to understand each other's point of view.

The Federation recognizes that it is the responsibility and right of the Company to maintain discipline and efficiency, and agrees that Management shall have the freedom of action necessary to discharge its responsibility for the successful operation of the Company. Such freedom of action is limited only to the extent specifically provided for in this Agreement or local supplements hereto.

* * *

Salaries—Section VI

Salaries will be paid according to a local schedule based upon the classification system in each bargaining unit. The place on the schedule of each position will be in relation to each other and in reference to the lowest and the highest paid positions. A written explanation of the local classification system followed will be furnished each Affiliate.

The following provisions are applicable to all bargaining units.

A. Position Description and Evaluation

The Union agrees that the preparation of descriptions and evaluation of new and changed positions are functions of management.

The Affiliate president will be notified of changes in position descriptions and the evaluation of new positions before [fol. 60] they are made effective. The Affiliate president will be notified at least fifteen days before the reevaluation of existing positions becomes effective and, where requested, a meeting will be held to discuss the change.

A request to review an existing description and/or evaluation may be made at any time by the Affiliate through the supervisor of the department on the regular grievance form.

a. Classifications

All salary positions are recorded in the East Pittsburgh Plan Area Salary Position Classification Manual. This establishes the position status regardless of who is placed on the pos-tion.

b. Composite Rates

Where continuous operation is required, certain positions are established for a swing or rotating shift and the rates established for these positions contemplate the requirements that the employes work on Holidays, Saturdays, or Sundays which occur in his established schedule, and work night turn when his schedule so requires. Employes with such composite rates will not receive the following:

1. Extra payment for working on a Holiday.
2. Credit for Holiday not worked toward overtime compensation.
3. Extra vacation day when Holiday falls within the scheduled vacation period.
4. Night turn bonus.

Should such a position be used as a single shift position, a multiplier of .937 should be used to change the composite rate to a regular shift rate.

[fol. 61] B. Group Leader Definition and Remuneration

Definition—A group leader is a non-supervisory employe who is a working member of a group, without disciplinary authority, who works under a minimum of supervision, who regularly leads, instructs, and guides employes in the group, and who generally allocates the work.

Remuneration—Additional compensation for group leaders when group leading is not contained in the job description will be based on the following provisions and schedule.

Appropriate groups for salary employes based on securing better operations will be determined locally by Management and will be a subject for negotiation before they are established. It is understood that employes may work as a group without payment of a group leader when group leaders' duties are not assigned. Duties of a group leader will not be assigned to an employe where less than three (3) employes are involved. No group of more than twenty (20) employes, exclusive of the leader, will be formed.

Schedule

Size of Group, exclusive of the leader	Addition to Base Rate
2 to 5	5%
6 to 10	7.5%
11 to 20	10%

Payment of group leader remuneration will be for full payroll periods starting with the first of the month after assignment of group leader duties and ending the first of the month following the discontinuance of the group leader activity. To avoid changes in group leader remuneration due [fol. 62] *to temporary changes in personnel, changes in the number of persons in the group will not be reflected in change in remuneration until a three month period has elapsed indicating that the change is permanent.*

C. Salary Re-Rates

1. Employees hired, whose work is satisfactory, will receive not later than six months (as determined below) after employment an increase of at least 10% above their hiring rate, provided the new rate does not exceed the maximum rate for the position.

2. Employes promoted to a position in a higher rate range, whose work is satisfactory, will receive not later than six months (as determined below) after promotion an increase of at least 10% above the minimum rate of the new position or the employe's rate before promotion, whichever is greater, provided the new rate does not exceed the maximum rate established for the position. Where the employe is known to be qualified and the transfer is to another position in a higher rate range in the same occupational line of work in the department, the increase will be granted at the time of transfer.

Employes hired or promoted between the 1st and 15th of the month, inclusive, will be given credit for that month, and those hired or promoted between the 16th and the end of the month will receive no credit for that month.

Time not worked will not be included in computing the six month period for salary rerate provision. Less than a half month will not be deducted but more than a half month will count as a full month not worked.

[fol. 63] D. Night Turn Bonus

Employes working night turn will receive an extra compensation of 10% of their earnings on night turn, when the regular quitting time is after nine o'clock in the evening (9:00 P. M.) and up to the including nine o'clock (9:00 A. M.) of the following day.

1. Night turn bonus will not be paid to employes working on duty turn shifts for hours subject to special bonus provisions.

2. Additional compensation for night turn will be considered as a bonus and will not appear as part of the base salary.

3. Non-exempt and Administrative or Professional employes will be paid night turn bonus based on weekly time slips. The bonus, in cents per hour, will be ten per cent of the salary hourly rate to the nearest tenth of a cent.

4. Exempt employes authorized for payment of night turn bonus will be made by the Division Manager in the form of a monthly list. The period of night turn assignment will correspond to payroll periods. Bonus payment will be ten per cent of the monthly salary to the nearest even cent.

E. Reporting for Work

Employees who report to work at Management's request on regular furlough days and at times not regularly scheduled will be granted a minimum of four (4) hours of work or equivalent pay, subject to details in local supplements. If the employe has qualified for overtime in accordance with the overtime provisions of this Agreement, extra remuneration as provided in Section X—Overtime—will be paid for hours not worked.

[fol. 64] Note: The foregoing provisions will not apply

in the case of an emergency such as fire, flood, power failure, or work stoppage by employes in the plant.

An employe who is requested to report for work but, who does not choose to remain for a period to qualify, or perform the work assigned will be paid only for the actual time worked.

F. Salary Reviews

Salary rate increases are based on merit and recognize improvement since the last re-rate by the employe in his capacity to handle the range of work of his position classification, his quality and quantity of work, and his cooperativeness and reliability. If the amount of improvement warrants an increase of 10%, an increase in rate of approximately that amount will be given, but not to exceed the maximum of the position range.

The salary review is an inspection of salary rates to establish the proper fulfillment of agreements and to determine that salary rates are currently consistent among employes in a given position in relation to productivity, quality of work performed, and experience. The effective date of any rate adjustments may be scheduled the first of the month following the period scheduled for the unit rate review or the first of either of the two succeeding months.

Salary reviews will be held semi-annually unless, due to existing circumstances, it is thought advisable by the Affiliate and Management either to change or omit the scheduled review. The procedure for such reviews is as follows:

1. At least four copies of the review sheets (Form 21985) will be prepared as of the month preceding the review, will be completed by the first of the month scheduled for the review and a copy will be given to [fol. 65] the locally designated Affiliate representative.

2. Employes within a basic unit or subdivision thereof are to be listed by position, and then in alphabetical order within a position group. The position name, number and rate range will be entered on the sheet, above the names of employes in a given position.

3. Sufficient information should be entered in the "remark" column to explain any special cases or conditions.

4. The district and group representative and an officer or member of the Negotiating Committee of the Affiliate will review the sheets with Management's representatives. An officer or representative of the Federation may attend the review.

5. All recommendations agreed upon at the review, including the new base rate and the effective date thereof, will be entered on the review sheets before completion of the review.

6. A list of the cases arising during the review on which further consideration is desired will be made up by Management. This list, after further consideration, will be discussed by the group making the review. If necessary, any special cases on which a decision cannot be reached will be submitted to the Negotiating Committee of the Affiliate for discussion with local Management.

7. The review sheets are to be numbered consecutively and the district representative, or an officer of the Affiliate, and the Management representative, will sign the original of each sheet, indicating that the review of the sheet is completed.

8. The original or Master copy of the review sheets is to be sent to the Industrial Relations Department [fol. 66] when the review is completed. In District office locations, Management's copy is to be retained by the District Manager.

9. Salary rate reviews will normally be held during April and October.

G. Information

That portion of Company instructions on government orders and laws, or government interpretations of such orders and laws, affecting employes and dealing with wages, hours, and working conditions, as well as instructions on interpretations of this agreement, will, upon issuance by the Company, be sent to the Affiliate and the Federation.

Local Management shall furnish the Affiliate involved with copies of all local Management interpretations of releases from headquarters as furnished under the preceding paragraph and interpretations of local supplements. The Affiliate will be furnished, periodically, with lists of employes transferred, hired, rehired, and released.

H. Payment for Partial Payroll Period

When an employe, having a monthly salary, is added to or separated from the roll after the first working day of the month, or in event of a leave of absence or furlough without pay during the month, payment will be made on the basis of the ratio of days worked during the payroll period to the number of regular working days in the payroll period.

Hours of Work—Section VII

The standard basic work week is forty (40) hours based on eight (8) hours per day, five (5) days per week, Monday to Friday inclusive. An employe's work day is the twenty-[fol. 67] four hour period beginning with his regularly assigned starting time of his work shift, and his day of rest starts at the same time on the day or days he is not scheduled to work. His work week starts with his regularly assigned work period on Monday.

Local conditions may make desirable a basic work week different from the standard basic work week for all or a portion of the employes. Such variations will be a matter for local negotiations. Unusual situations may require modification of the established work schedules in the different units which may warrant special wage payment provisions which will be negotiated locally. The schedules of hours for the established shifts in the bargaining units are contained in the local supplements.

Different methods of attendance control are employed throughout the Company. The method used is determined by local situations and is designed to control local problems and is a subject for local collective bargaining.

In computing hours worked on late arrivals, early departures and for overtime in connection with attendance control, an employe will be credited with time worked

from the start of the one-tenth hour interval in which the recorded starting time falls, and to the end of the one-tenth hour interval in which the recorded time of departure falls. Where starting or stopping times are shown on the pass, entrance before and exit after the indicated time will not be credited. Elapsed hours will be computed in terms of hours and tenths of hours.

A. Regular Hours

The work period for non-exempt employes is established by his Employe Pass. Employes should [fol. 68] *be ready to start work at the beginning of the work period and remain at work until their established quitting time.*

B. Irregular Hours

1. An Irregular Hour Pass will be furnished to non-exempt employes by the Supervisor to authorize and to record that the employe worked hours at variance with his regular schedule.

2. Employees entering the Plant during their scheduled work hours on a regular work day will be required to sign a Late Arrival and Re-admittance Pass.

3. An Irregular Hour Pass will be required for all entrances and exits from the Plant on Saturdays, Sundays or Holidays. If the employe leaves the Plant for lunch hour, the Pass should be time stamped and returned for re-admittance after the lunch hour. The Pass should be left at the entrance when final exit is made for the day.

4. The inclusion of a lunch period in regular working shifts is accepted as a basic principle. For Saturdays, Sundays and Holidays, all employes working more than five hours will be assumed to have taken a lunch period the length of which will be indicated on the Irregular Hour Pass. Under special conditions which require continuous work, the Irregular Hour Pass shall be marked "Straight Through" and the reasons given on the back of the Pass.

5. In case of a mistake in making out the Irregular Hour Pass or a change in the plan, a new Pass should be used instead of making alterations on the original Pass.

[fol. 69] *6. When leaving the Plant for reason of personal convenience during his regular shift a non-exempt employe will secure authorization from his Supervisor and an Irregular Hour Pass.*

7. When leaving the Plant for company business, during his regular shift a non-exempt employe will secure a Company Business Pass from his Supervisor.

8. An employe's weekly time slip should show actual hours worked and must agree with the Irregular Hour Passes and Late Arrival Passes acquired during the week.

Seniority and Personnel

Administration—Section VIII

* * *

F. Furloughs

When furloughing of employes becomes necessary, the local representatives will receive such reasonable advance notice as is practicable under the circumstances. Furloughs are of three (3) types:

1. Regular furloughs are a number of days off per week or per month without pay given employes as a part of the program of sharing work in lieu of reduction of force.

2. Emergency furloughs are periods off without pay resulting from material shortages, power failures, labor disturbances or other conditions where transfer of employes to provide work is not feasible. When such conditions are anticipated, the subject will be discussed with the Affiliate Negotiating Committee.

3. Disciplinary furloughs are time off without pay as a punishment for misconduct of an employe.

* * *

[fol. 70] *K. Absence from Work*

1. An employe absent for a period of two weeks without having, during that time, reported the reason for his absence, will not be paid for the absent time and may be released. Either or both actions will be rescinded if the employe can satisfactorily establish that it was impossible, because of a physical condition, for him to communicate during that time. An employe failing to report for work at the expiration of a leave of absence (other than Military Leave) or after a period of sickness when physically able to work, will be considered as absent.

* * *

Miscellaneous Procedures—

Section IX

A. Jury Duty

Salaried employes will be paid their regular salary while on jury duty but will be expected to report for their regular duties when temporarily excused from attendance at court. No salary will be paid during furloughs or days that would have been furloughs while on jury duty.

* * *

Overtime—Section X

A. Non-exempt Employes

Hours worked by non-exempt employes, except hours worked on Sunday, in excess of 8 hours in any day or 40 hours per week, will be paid at an overtime rate of one and one half times the employe's average earned hourly rate.

Absent hours considered as involuntary will be considered as hours worked for determining overtime. Involuntary absences are defined as follows:

[fol. 71] 1. Funeral or death in immediate family (includes relatives living in same household with the employe, or mother, father, brother, sister or

child who are not of the same household). *Symbol G*

2. Jury duty, *action as election board official, court or government agency summons issued through no fault of the employe. Symbol G*

3. Injury or illness of employe. (*This shall include medical or dental appointments which can only be made during working hours if the Supervisor is given advance notice of such appointments*). *Symbol B*

4. Furloughs for which deduction from pay is made except in case of disciplinary furlough. *Symbol F*

5. Holidays *Symbol H* or Vacation days. *Symbol C*

6. Union activities by elected representatives as contemplated in this agreement. *Symbol G*

7. *Time off during regularly scheduled work week anticipating Saturday or Sunday work will be considered as excusable absence but payment made for such time not worked may be credited against overtime payments due for Saturday or Sunday time for that week. Symbol D*

Hours worked by non-exempt employes on Sunday after forty straight-time hours (including involuntary absences) have been worked in the week will be paid at an overtime rate of twice the employe's average earned hourly rate.

Hours worked on holidays by non-exempt employes will be paid at an overtime rate of one and one half times the employe's average earned hourly rate. Such payment is in addition to the employe's salary if the holiday falls with-[fol. 72] in the work week, Monday to Friday inclusive. No salaried payment is made to employes for holidays falling on Saturdays not worked.

The above provisions apply to the standard basic work week. Special conditions may require exceptions and local overtime provisions to cover such exceptions. These questions are a subject for local negotiations.

The earned rate for overtime purposes will consist of

straight time earnings, including base rate, night turn bonus, group leader remuneration, and incentive payments.

B. Exempt Employees

Administrative and professional employees, exempt under the Fair Labor Standards Act, will, when agreed upon locally, be issued exempt passes.

Overtime hours of exempt employes in District Field areas will be paid on the basis of scheduled hours as provided in a supplement hereto.

Employes who are issued exempt passes shall be paid for extra hours only when scheduled by the supervisor. Incidental overtime worked shall be regarded as casual and a part of the job requirement and not subject to inclusion in schedules. Scheduled overtime will approximate overtime requested or approved by the responsible supervisor. Schedules will be prepared on a monthly basis, in advance, and expressed in terms of equivalent weekly hours. As a general policy schedules requiring Sunday and holiday work should be avoided.

Vacation payment will be limited to the basic work week.

Payment for scheduled overtime will be in accordance with the following schedules:

[fol. 73] Base Salary Rates for 40 Hours	Pay for Scheduled Overtime Over 40 Hours per Week
Up to and including $400.00 per month ($92 per week)	Time and one-half
Over $400 per month (over $92 per week)	$15.00 per scheduled hour ($3.50 per scheduled hour for weekly paid employes) with a maximum payment of $750.00 per month ($173 per week) less 10¢ for each $1.00 of base rate under $750 per month ($173 per week).

C. Eligibility

All salaried employes who are non-exempt as defined under the interpretation of the Fair Labor

Standards Act will be paid overtime on the basis of actual hours worked as shown on weekly time reports, verified by irregular hour passes. All employes who are exempt under these definitions will be paid for scheduled hours as outlined in Section X, Part B of the Agreement between the Westinghouse Electric Corporation and the Federation of Westinghouse Independent Salaried Union.

D. Determination of Hourly Rate for Overtime Compensation

The hourly rate for monthly paid salary employes will be determined by multiplying the monthly salary by 12 and dividing by the product of 52 and the established normal weekly hours.

[fol. 74] *E. Special Provisions*

1. An employe should work overtime when production requirements necessitate, regardless of time lost during the week.

2. Reasons for all absences will be recorded by the employe on the Weekly Report of Salaried Employes (Form 21537).

3. The Attendance Record—Salaried Employes (Form 4809) may be reviewed by the Union Representatives for their group.

Holidays—Section XI

Holidays observed by the Company will be New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Special days observed in local areas will not be considered as holidays observed by the Company, but as "time off" days.

When a holiday falls on Sunday, it will be observed the following Monday. Basic hours on a holiday will be credited as time worked for salaried employes, when the holiday is observed within the basic work week of the individual.

Vacation—Section XII

The vacation periods of employes will be arranged so that they do not unreasonably interfere with the operation

of the plant or office. Insofar as practical, the employe will be permitted to take a period satisfactory to him. Where more employes in the same position desire the same vacation period than can be permitted to be absent, preference will be based on service credit.

Certain plants or offices will shut down each year for vacation purposes, and the time of the year for shut-down [fol. 75] will be a matter for local negotiations. In these locations the vacation will run concurrently with the shut-down period. Employes who become eligible for vacations subsequent to the annual shut-down, but before the end of the year, will be granted vacation pay when they become eligible, if they were absent during the shut-down period, without additional time-off for vacation. It is recognized that some employes will be requested to work during the shut-down period.

Salaried employes having one year continuous employment on salary immediately preceding the time of starting vacation will receive a vacation of two (2) weeks with pay. Salaried employes with five years total service will receive a two (2) weeks vacation after six months' continuous employment immediately preceding the time of starting vacation. Salaried employes with twenty (20) years total service, having six (6) months' continuous employment immediately preceding the time of starting vacation, will receive a total of three (3) weeks vacation with pay.

Salaried employes working on an incentive basis will be paid vacations at their current base rate plus the average weekly incentive bonus for the preceding calendar quarter.

In the case of a salary employe where the one year of service immediately preceding the vacation period is a combination of hourly and salary and which includes at least three months on the salary roll (not necessarily continuous), the vacation will be the same as for all other qualified salary employes. An employe will be entitled to vacation for which he would have been entitled as an hourly paid employe up to the time he has completed 3 months of service on the salary roll. If not qualified for vacation at the time of transfer, he will be entitled to a [fol. 76] vacation on hourly basis if he qualifies before completion of 3 months of service on salary, and after com-

pleting his three months of service he will qualify for any difference between salary and hourly paid vacation hours providing the 3 months are completed on or before December 31 of the year in which the transfer occurs.

When an established holiday or its observance falls on a normal week day within the vacation period of a salary employe, an additional vacation day will be granted.

It is the responsibility of Management to see that all employes take their allot-ed vacations.

When an employe is removed from the active payroll for any reason, except disciplinary discharge, payment for vacation not taken for the current year will be made if the employe has qualified for vacation.

1 A normal vacation period begins at the starting time of the employe's regular shift upon the date of the next regular working day after the employe leaves the Works, and expires at the end of the fourteenth or twenty-first calendar day thereafter, as determined by the employe's vacation eligibility, with consideration being given to the provision of the Agreement covering holidays within the normal work week of the vacation period.

a. In certain cases it is necessary or desirable from the viewpoint of the employe or the Company to arrange vacations in periods of less than the full period for which the employe is eligible. However, in no case will a period of less than one full day be taken as a vacation.

[fol. 77] *2. Vacations within a department will be scheduled in advance during the calendar year period with due consideration being given to production requirements. Schedules will be developed in accordance with employe preference. Where more than one request is made for the same period, the employe with the most seniority will receive preference, except by specific agreement between employes and approval of the supervisor.*

3. After an absence from work of 60 days or more for any cause, an employe who is otherwise

qualified must be actively at work for a 7 day period before receiving vacation. If the employe returns from such absence within the last 30 days of the year, and is otherwise qualified for vacation, the 7 day qualifying period will be waived, after he has worked one day.

4. Employes on the disability roll at the end of the year, who have worked during the year and are qualified for vacations but have not taken it due to illness, will be paid for vacation during the last three weeks of the year.

5. Vacations must be taken within the calendar year except that an employe who does not become eligible for vacation until within the last fourteen working days in December may carry over as vacation into January of the succeeding year. In no case, however, shall the vacation period extend beyond the fifteenth working day in January.

6. An employe to be eligible for vacation with the calendar year must have been actively at work during that calendar year in addition to having completed the necessary total and continuous service requirements.

* * *

[fol. 78] Payment for Negotiating Time—

Section XV

It is agreed that negotiating time will be kept to a minimum commensurate with good practice and in the interest of efficiency. Unless of such nature as to be termed urgent, negotiating time will be scheduled by Management and the Federation or Affiliate representatives in advance and in such manner as to least interfere with regular work schedules.

Local Managements of the Company are to be kept advised by the Affiliates as to the names of their authorized representatives.

The following procedure will apply:

A. Officers and other representatives of the Affiliates and/or the Federation, whether exempt or non-exempt em-

ployes, must give notification to and secure a time report from their respective supervisors when stopping work to conduct union business, whether or not with Management (including, without limitation, investigation of complaints that may lead to grievances, handling and adjustment of grievances and attendance at meetings of Union committees) and must return the report to the supervisors when again ready to start work.

B. Payment will be made by the Company at the representative's salary rate only (whether exempt or non-exempt employe) for such time reports covering time spent in:

1. Investigation of complaints that may lead to grievances.
2. Handling and Adjustment of grievances.
[fol. 79] 3. Attendance at meetings with Management within the employe's basic work week.
4. Attendance at meetings with Management outside the employe's basic work week where such attendance is not voluntary.

Time covered by the above reports (subparagraph B) will be considered as hours worked for the purpose of determining overtime.

C. The affiliate will reimburse the Company for all such payments except payments on time reports covering meetings requested by Management and rate reviews. The Company will deduct amounts for which it is entitled to reimbursement from any amounts due the Affiliates, and the Affiliates will make up any deficiencies by separate payment. Time reports covering such payments will be furnished to the Affiliates.

* * *

Modification—Section XVI

A. This Agreement expresses the understanding of the parties and it will not be changed, modified, or varied except by a written instrument signed by a duly authorized agent of each of the parties hereto. Any negotiations relat-

ing to proposed changes or additions in such provisions which are deemed to be Company-wide and generally applicable to the various collective bargaining units will be carried on between representatives as outlined in Section II.

B. This Agreement covers Company-wide matters. All agreements made locally, other than agreements as to settlement of specific grievances, shall be embodied in local supplements to this Agreement, agreed upon by the re-
[fol. 80] spective Affiliates and local Managements. Such local supplements shall be in writing and shall cover the procedures for administering the provisions contained in this Agreement.

C. In addition, the respective Affiliates and Plant Managements may, at any time, present to each other subject-matters covering items of collective bargaining not covered hereby and not deemed of a Company-wide nature or generally applicable to the various certified collective bargaining units, and any negotiations relating to such proposed items will be carried on between the respective Affiliates and Plant Management and any such matters agreed upon will be embodied in local supplements to this Agreement.

• • •

Sections of this Agreement in italicized print have been executed as Local Supplements by T. I. Phillips, Vice President, Westinghouse Electric Corporation and J. H. Dillon, President, Association of Westinghouse Salaried Employees.

[fol. 81] EXHIBIT "F" TO FIRST AMENDED COMPLAINT

Section 2
Division 1G2

July 1949 Procedures

Westinghouse Electric Corporation

Manual of Accounting and Industrial Relations Manual

Part 6—Industrial Relations Policies and Accounting

Recording Attendance and Preparation of Gross Salary Payroll—Non-Exempt Employes

1. General

a. This procedure provides for recording attendance, making payments for salaries at base rates authorized by form 23546, payment of night turn and other extraneous items and computation of overtime bonus and maintaining records within the scope of the Fair Labor Standards Act (Wage-Hour Law)—see 6-1-1G4.

b. For payroll purposes, certain employes represented in collective bargaining, who are in non-supervisory administrative or professional positions which could otherwise be regarded as exempt are paid in accordance with these instructions, provided their base rates are not in excess of $400.00 per month or $92.00 per week (see par. 8).

c. The procedure as outlined in Exhibit "D" provides for preparation of payrolls and writing of checks or pay envelopes without using form 22112.

2. Accounts

2140 Accrued salaries and wages

[fol. 82] 3. Forms

4809 Attendance record—salaried employes
21018 Record of earnings and deductions
21535 Irregular hour pass
21537 Weekly report of salaried employes
21580 Face sheet for weekly report of salaried employes

21993 Late arrival and readmittance pass
22112 Employe's payroll account—salary
22289 Payroll distribution—salary
22501 Request for salary payment
22962 Record of earnings and deductions
23128 Record of earnings and deductions
23198 Record of approved signatures
23546 Authorization for change in payroll

4. Gross Earnings

Gross earnings shall include all compensation for services rendered and are generally related to or associated with a specific weekly or monthly payroll period. When the period is indeterminate, the items shall be included in period in which payment is made.

a. The following shall be included in the average earned rate per hour for computation of overtime:

(1) Regular salaries (converted to fixed rates per hour).
(2) Incentive bonuses.

Note: Certain salaried employes are on a measured incentive basis which is a modification of the standard time plan to suit specific applications. Incentive bonus shall be calculated in accordance with method established for each such plan.

(3) Commissions on sales and bonus for sale of inactive stocks.
[fol. 83] (4) Prizes—i. e., money, merchandise (values stated at cost), savings bonds or any form of value given in connection with sales campaigns or for other rendered service.
(5) Payment for special services rendered the Company by employes.
(6) Group leader bonus (see par. 9).
(7) Night turn bonus (see par. 10).
(8) Meals (when furnished as part of compensation to employes working full or part time in Company operated restaurants, cafeterias or dining rooms).
(9) Band payments (when playing on Company property or at Company sponsored activities).

b. The following items shall not be included in the calculation of average earned rate for computation of overtime:

(1) Patent awards (see 3-52-2W4).
(2) Suggestion awards (see 6-7-3G1).
(3) Tip coupon payments (see 3-52-2G6).
(4) Payment for magazine articles or teaching when not part of employe's regular duties.

c. All items listed under pars. 4a and 4b are gross earnings and are income subject to Social Security Tax and Federal Income Tax Withholding.

d. Gross earnings shall not include:

(1) Travel allowances for use of personal automobile on Company business.
(2) Reimbursement, advances or allowances for transportation, hotel, meals, etc., when traveling on Company business.
(3) Reimbursement for cost of supplies, tools or other approved expenditures made by employes in behalf of or for the Company.

[fol. 84] Note: Such advances, reimbursements or allowances shall not be shown on form 21018, 22962 or 23128 or otherwise included in any record of employe's income or earnings.

5. Established Hours

The established hours of work shall be considered as hours up to and including forty (40) hours which are observed by the plant or office in operation of a regular shift —e. g., 35, 36¼, 37½ or 40. When an employe is transferred to another location having different established hours of work, form 23546 shall be changed to reflect a proportionate change in base rate.

6. Record of Hours Worked

a. Each non-exempt employe shall prepare form 21537 weekly (in ink or typewritten) and affix his full signature in ink (see par. 6d).

b. Irregular hours reported on form 21537 for each day shall be checked with irregular hours reported on forms

21535 and/or 21993 and reported time adjusted to agree with time actually recorded, where necessary.

(1) Payments shall not be made for time reported in excess of that specifically authorized by the Supervisor on form 21535 unless he personally approves the additional time as time actually worked.

(2) Fractional hours shall be recorded in decimals on form 21537 to next higher one-tenth (.1) hour.

(3) Work in excess of forty (40) hours per week or eight (8) hours per day shall be reported as overtime. Where established hours are less than forty (40), extra hours worked up to and including forty (40) hours shall be [fol. 85] reported on form 21537 as irregular hours although payment shall be made at straight time for the extra hours.

(4) Employes reporting during the thirty (30) minute period immediately preceding their regular starting time or departing during the thirty (30) minute period immediately following their regular quitting time shall not report such time as worked. This time is recognized as a period of transition during which no work is to be performed. The supervisor shall see that no productive work is performed during such periods unless specifically authorized. If work is authorized during this period, time worked shall be reported on form 21537 and authorized by form 21535.

(5) Actual traveling time on Company business shall be recorded as elapsed hours when done within the hours regularly worked by employe on a regular work day or when required on Saturday, Sunday or holiday during hours normally worked on regular working days. Traveling time either before or after regular starting and stopping time shall not be recorded as hours worked.

(6) Saturdays, Sundays and holidays spent away from an employe's home location shall be considered as time worked only if he is required to render actual service on such days.

(7) A non-exempt employe shall not be permitted to perform work for the Company away from his regular work station at any time other than the established work hours without specific approval from his supervisor. Form 21535

shall be issued in all such cases and time not recorded by checkboard or clock shall be approved by the employe's supervisor and reported on form 21537 as hours worked.

(8) Programs conducted outside of regular working hours to train employes in higher skills is not time worked if they qualify as follows:

[fol. 86] (a) Attendance on the part of employe is voluntary. No training program shall be considered voluntary if the condition of employe's continued employment in his present job requires attendance.

(b) The employe shall not produce any goods or perform any other productive work during such periods of training.

(c) The training course shall be given outside regular working hours.

(d) The training course is intended to train employes to a new, different or additional skill, and is not intended to make employe more efficient in his present job.

Note: Time shall be allowed employes attending classes during regular working hours. Time shall also be allowed after regular hours unless such classes meet the qualifications listed above. Questionable cases in regard to allowance of time after regular working hours, shall be referred to Director of Payroll Accounting.

c. The supervisor shall verify that hours have been reported in accordance with par. 6b and determine that all absent time, holidays or vacations, have been indicated on form 21537.

(1) Forms 21537 shall be personally approved by department head or authorized supervisor whose signature shall be recorded with Manager of Accounting on form 23198.

(2) Record night turn hours actually worked in proper column. Failure to do so will cause errors in calculation of pay.

(3) Late arrivals and irregular hours shall be substantiated by form 21535 or 21993 and shall be attached to form 21537.

[fol. 87] d. Forms 21537 with attachments (if any) for all non-exempt employes in the department shall be affixed

to form 21580 and forwarded to the payroll location on first working day of the subsequent week. (For preparation of form 21580, see 6-2-1G3).

e. The supervisor shall prepare form 21537 for each non-exempt employe absent on the day scheduled for the submission of form 21537. Upon return of employe, he shall prepare form 21537 which shall be approved by the supervisor and forwarded to payroll location under separate cover. Payroll location shall substitute this form 21537 for the one submitted by supervisor.

f. Form 4809 shall be maintained by each department head or other employe designated for all employes and should be in agreement with time worked as shown on form 21537.

g. Managers of Accounting shall arrange with local management for adequate police supervision at entrances during periods in which non-exempt salaried employes enter or leave the Company premises.

7. Determination of Overtime Hours

a. Hours worked by non-exempt employes, except hours worked on Sunday, in excess of eight (8) hours in any day, or forty (40) hours per week will be subject to overtime payment at one and one-half (1½) times employe's average earned hourly rate.

b. Involuntary absences will be considered as hours worked for determining overtime. Involuntary absences are defined as follows:

(1) Funeral or death in immediate family (includes relatives living in the same household with employe, or mother, [fol. 88] father, brother, sister, or children not living in the same household.

(2) Jury duty.

(3) Illness or injury of employe.

(4) Furloughs for which deduction from pay is made (except disciplinary furlough).

(5) Holidays and vacation.

(6) Union activities by elected representatives as contemplated in union contracts or supplements thereto.

c. Hours worked by non-exempt employes on Sunday, will be subject to overtime payment at twice employe's average earned hourly rate provided employe has worked forty (40) straight time hours (including credit for involuntary absences) during preceding days in workweek.

d. Hours worked on holidays by non-exempt employes will be subject to payment at one and one-half (1½) times employe's average earned hourly rate. Such payment is in addition to employe's base salary if holiday falls within workweek, Monday through Friday. No payment shall be made for holidays falling on Saturday unless worked, in which case such hours are overtime subject to time and one-half rates.

e. A day shall consist of twenty-four (24) consecutive hours beginning with time employe starts to work or is required to start, whichever is earlier. A week is the established workweek consisting of five (5) days, Monday through Friday, and is generally applicable except where local conditions or requirements are such that swing or rotating shifts may necessitate a work schedule which overlaps the standard or established workweek, providing a day or days of rest at some time other than Saturday and/or Sunday. Local supplements shall define the provisions for overtime for such employes.

[fol. 89] f. Non-exempt salaried employes are considered as subject to the provisions of the Walsh-Healey Law (see 6-1-1G2).

8. Payment for Overtime Hours

a. All non-supervisory salaried employes exempt under the Wage-Hour Law as administrative or professional employes and those engaged in outside selling, who are represented in certified bargaining units, whose base rates are under $400.00 per month ($92.00 per week) and all non-exempt salaried employes (regardless of rate) shall be paid for overtime hours as provided in par. 7.

b. Payment for overtime may be made in the pay period next following that in which overtime was worked. When monthly pay periods do not coincide with end of accounting month, payment shall be computed on basis of earned hourly rate in effect in last week of period.

c. Overtime bonus payments shall be charged to the same primary account as that to which fixed salaries are charged. Overtime bonus paid to non-exempt salaried employees shall be shown on Expense and Budget Statements as "Statistical Memoranda" in space provided for this data on the statement forms.

d. Overtime payments shall be booked as of Friday in payroll week in which earned. When not feasible to calculate overtime payments for salaries chargeable to factory expense before closing accounting month, estimate amount and enter on form 22289 for month in which it is earned but not paid. Credit account 2140 in current month and reverse in subsequent month showing reversal as a contra on form 22289 in that month. For overtime not chargeable to factory expense (including Statements 25 which are subsequently cleared to factory expense) book in month [fol. 30] paid where it is not feasible to determine exact figure before closing current accounting month's business.

e. Exempt administrative, professional and outside sales personnel represented in collective bargaining, will, if agreed upon locally, be issued exempt passes. (For payment see 6-2-1G3).

f. Use of factors times base rate (see Exhibit "E") is recommended for computing overtime earnings when there are no other involvements affecting overtime rate—e. g., night turn or clerical incentive earnings.

Note: Develop overtime bonus for salaried employes for statements (see par. 8c and 6-20-7G1) by taking one-third ($\frac{1}{3}$) of total overtime payment even though some double time payments may be involved.

9. Group Leader Bonus

a. Group leader bonus (see Exhibit "C") shall be paid to salaried employes acting as group leaders at all locations of the Parent Company (except Ken-Rad Lamp and Sturtevant Divisions) and all Subsidiary Companies except Westinghouse Radio Stations, Inc., and Westinghouse Electric Supply Company locations at Boston, St. Paul, Philadelphia and Milwaukee.

b. Basis for determining amount of extra remuneration:

(1) The amount of extra remuneration shall be determined on basis of usual number of employes in the group, exclusive of group leader, and varies according to size of group, as follows:

No. in Group (Excluding Leader)	Rate of Additional Payment Beyond Base Rate
2 to 5 (incl.) employes	5. %
6 to 10 (incl.) employes	7.5%
11 to 20 (incl.) employes	10. %

[fol. 91] (2) Variations in the size of groups arising from temporary employment, transfer or reassignment of personnel to cope with temporary changes in volume, special or uncommon work, etc., shall not become the basis for a change in established rate of additional payment.

(3) Where the size of a group is increased or decreased for a period of more than three (3) months, and presumed to represent a change in group's usual or normal size, rate of additional payment shall be changed in accordance with above schedule. Effective date of such change shall be the beginning of the following pay period.

(4) The status of group leaders shall be reviewed at least once each six (6) months, preferably as part of semi-annual rate reviews, to determine that rate of extra compensation is proper; whether a change in size of group justifies a change in rate, etc. Revised lists shall be submitted in June and December of each year or after each rate review to payroll location, showing current status of each group leader.

(5) Where a clerical activity which ordinarily functions as a single group is segregated because of peculiarities in routing of documents, lack of space, or other reasons, the segregated groupings shall constitute separate groups, and a group leader may be established for each, provided the other requirements of group leadership are met. Extra remuneration for such group leaders will be on the basis of number of employes in their respective groups.

(6) When group leader activities cease, due to reclassification, transfer or disbanding of the group; or when size

of group is changed so that percentage of bonus is affected (see par. 9b(3)), payroll location shall be notified immediately by letter.

[fol. 92] c. Authorization and approval of extra payment.

(1) Group leaders bonus shall not be added to base rate authorized on form 23546. Payment shall be authorized by letter or list prepared and signed by department manager and Industrial Relations representative and approved by same executive who ap-roves form 23546. Such letter or list, when approved, shall be forwarded to payroll location as valid authorization only until next locally scheduled semi-annual rate review when a superseding authorization is required which shall include any modifications arising from rate reviews; for reasons outlined in par. 9b(3) or as a result of newly created groups, trar sfers, or removals. Department Managers should review their groups prior to rate reviews to ascertain proper status of each leader. Authorization shall become effective at beginning of payroll period following its receipt.

(2) The use of the symbol "GL" followed by percentage of additional payment is recommended on addressograph plates to facilitate identification of employes eligible for such payment and computation of extra payment.

d. Overtime rates of group leaders receiving these extra payments are affected by such addition, and care should be exercised in using the proper earned rate per hour when computing payment for overtime (see Exhibit "B").

e. In no case shall group leader bonus be paid for a fractional payroll period except in the event of a separation.

10. Night Turn Bonus

a. Salaried employes working night turn (i. e., when regular quitting time is after 9:00 p. m. and up to and including 9:00 a. m. of the following day), shall be paid at night turn bonus equal to ten per cent (10%) of their earnings. The bonus shall not be included in authorized salary rate on form 23546.

[fol. 93] b. Non-exempt employes paid either weekly or monthly—

(1) Non-exempt employes who submit form 21537 weekly shall be paid night turn bonus for only the hours actually worked, except when such employes are on vacation or for holidays not worked.

(2) Form 21537 shall indicate in appropriate column that employe is working night turn. Supervisor's approval will be adequate authorization for payment.

(3) Payment of night turn bonus shall be discontinued when employe is transferred to day turn.

(4) Payment may be made in pay period following pay period in which night turn was worked.

11. Extended Salary Payments

a. Form 21537 shall be prepared by supervisor for each non-exempt employe who is eligible to receive his salary to end of month in which he became ill or disabled (see par. 6e). These forms shall be reviewed by payroll location to determine that payment is not made beyond end of current thirty (30) day period from which illness began without receipt of form 22501.

b. Group leader bonus shall be paid only to end of calendar month in which disability occurred or end of last week in accounting month for weekly employes.

12. Payment for Partial Payroll Period

a. When an employe having a monthly salary is added to or separated from the payroll after the first (1st) working day of the month, or by leave of absence of one (1) week's duration or longer, payment shall be made on basis of ratio of days worked during payroll period to number of regular working days in payroll period (see Note). Where a new employe begins work at any time other than the beginning of workweek, payment shall be made at straight time for [fol. 94] all hours worked up to forty (40) which may include Saturday and Sunday, except that hours in excess of eight (8) in any one day shall be paid for at time and one-half. Payment for hours over forty (40) shall be made at time and one-half (see par. 8). Any one of the

holidays recognized by the Company shall be included in number of working days in period as a day worked, except when a new employe begins work on the day immediately following a holiday, in which case payment for the holiday shall not be made.

Note: A regular working day is a day on which employes are scheduled to work.

b. Factors to be used in paying employes added to or separated from the payroll after the first (1st) working day of the month; or to pay an employe for fewer days than the full month, are as follows:

20 Day Month		*21 Day Month*	
Days	*Factor*	*Days*	*Factor*
1	.0500	1	.0476
2	.1000	2	.0952
3	.1500	3	.1429
4	.2000	4	.1905
5	.2500	5	.2381
6	.3000	6	.2857
7	.3500	7	.3333
8	.4000	8	.3810
9	.4500	9	.4286
10	.5000	10	.4762
11	.5500	11	.5238
12	.6000	12	.5714
13	.6500	13	.6190
14	.7000	14	.6667
15	.7500	15	.7143
16	.8000	16	.7619
17	.8500	17	.8095
18	.9000	18	.8571
19	.9500	19	.9048
20	1.0000	20	.9524
		21	1.0000

[fol. 95]

22 Day Month		*23 Day Month*	
Days	*Factor*	*Days*	*Factor*
1	.0455	1	.0435
2	.0909	2	.0870
3	.1364	3	.1304
4	.1818	4	.1739
5	.2273	5	.2174
6	.2727	6	.2609
7	.3182	7	.3043
8	.3636	8	.3478
9	.4091	9	.3913
10	.4545	10	.4348
11	.5000	11	.4783
12	.5455	12	.5217
13	.5909	13	.5652
14	.6364	14	.6087
15	.6818	15	.6522
16	.7273	16	.6957
17	.7727	17	.7391
18	.8182	18	.7826
19	.8636	19	.8261
20	.9091	20	.8696
21	.9545	21	.9130
22	1.0000	22	.9565
		23	1.0000

13. Furloughs

Furloughs necessary to temporarily reduce the force and spread available work shall be a minimum of one (1) day per week. Employes shall not be separated from the roll, but the time off shall be without pay.

a. Procedure for furloughing salaried employes is as follows:

(1) Furloughs expressed in days are anticipated and are scheduled on a weekly basis, regardless of length of payroll period—i. e., weekly or monthly.

(2) Accumulation of furlough time is not permitted.

[fol. 96] (3) Employes who report their time on form

21537 shall insert the word "furlough" or the symbol "F" opposite day or days absent. When actual time worked does not coincide with the furlough schedule, correction shall be made in a subsequent pay period.

b. Employes paid weekly—The schedule of furlough days shall be submitted to payroll location not later than Monday of the week in which the furlough is to be taken. Payment shall be made on basis of current weeks' fixed salary less number of days furlough.

c. Employes paid monthly. A schedule of furlough days shall be submitted to payroll location by third working day of the month for furloughs to be taken during current month. Payment shall be made on basis of current month's fixed salary in accordance with factors given in par. 12.

d. Time worked on schedule furlough days shall be paid for at employe's base rate per hour in the case of weekly employes, and on basis of factors given in par. 12 for monthly employes, which is the basis for furlough deductions. Hours worked in excess of forty (40) per week or eight (8) per day are paid in accordance with established overtime regulations.

14. Overtime Meals

Employes who receive payment for overtime are not entitled to overtime meal tickets or meal allowances.

Copies to: Union Representatives (U. E. and Federation)

(Here follows 1 Photolithograph, side folio 96a)

DETERMINATION OF HOURS WORKED

Example #1 - Day turn - 40 hour work week

DATE	DAY	HOURS ACTUALLY WORKED				HOURS ALLOWED		ABSENCE SYMBOL
		DAY TURN		NIGHT TURN				
		REGULAR HOURS	IRREGULAR HOURS	REGULAR HOURS	IRREGULAR HOURS	VACATION	HOLIDAY	
	MON.	0						A
	TUE.	7.7						A
	WED	6	2					
	THUR.	C					8	H
	FRI.	0				8		C
	SAT.		10					
	SUN.		2					
TOTAL		13.7	14.					

Form 21537

Interpretation

Double	Time and one Half	Straight	Night	
		0		← 1
		7.7		← 1
	2.	8.		← 2
		8.		← 3
		8.		← 5 + 2
	2.	8.		← 6
3.7		.3		← 9
3.7	4.0	40.0		

Example #2 - Day turn - Furlough - 40 hour work week

DATE	DAY	HOURS ACTUALLY WORKED				HOURS ALLOWED		ABSENCE SYMBOL
		DAY TURN		NIGHT TURN				
		REGULAR HOURS	IRREGULAR HOURS	REGULAR HOURS	IRREGULAR HOURS	VACATION	HOLIDAY	
	MON.	0						F
	TUE.	6						A
	WED	8						
	THUR.	0						C
	FRI.	8						
	SAT.		7.5					H
	SUN		4.					
TOTAL		22.	11.5					

Form 21537

Interpretation

Double	Time and one Half	Straight	Night	
		0		← 7
		6.0		← 1
		8.0		
		8.0		← 4
		8.0		
	7.5			← 8
2.0		2.0		← 5
2.0	7.5	32.0		← 9

Example #3 - Night turn - 40 hour work week

DATE	DAY	HOURS ACTUALLY WORKED				HOURS ALLOWED		ABSENCE SYMBOL
		DAY TURN		NIGHT TURN				
		REGULAR HOURS	IRREGULAR HOURS	REGULAR HOURS	IRREGULAR HOURS	VACATION	HOLIDAY	
	MON			8				
	TUE				8		8	H
	WED			8		8		V
	THUR			6.7				A
	FRI			8				
	SAT				8			
	SUN				4			
TOTAL				30.7	28	8	8	
Form 21:37								

Interpretation

Double	Time and one Half	Straight	Night	
		8.	8.	
	8.	8.	8.	← 80 — 5050
		8.	8.	←
		6.7	6.7	←
		8.	8.	
	6.7	1.3	8.	←
4.0			4.	←
4.0	14.7	40.0	40.7	←

ADDENDA

The employe's time shall be reported on form 21537 in accordance with the examples, which are composite illustrations of the various conditions regarding absent time. The interpretations herein are the values allowed for each hour of work or absence in relation to the total for the basic work week. The column for "straight" time on monthly forms 22112 may be used to indicate time worked over the basic work week when it is less than forty (40) hours.

1. Voluntary absences are indicated as time worked only for the number of scheduled daily hours less hours worked on Saturdays and Sundays which are not holidays.

2. Time worked in excess of eight (8) hours in one (1) day shall be paid at one and one-half ($1\frac{1}{2}$) rate regardless.

3. Vacation time shall be indicated as time worked.

4. Involuntary absences shall be indicated as time worked.

5. Hours over forty (40) (less eight (8) hours per day of furlough) in one (1) week after making adjustments for voluntary absences, shall be paid at one and one-half ($1\frac{1}{2}$) rate if worked on Saturday and shall be paid at double rate if worked on Sunday.

   Note: When furlough time applies to an established work week of less than forty (40) hours, the time to be made up to equal forty (40) hours minus eight (8) hours per day of furlough shall be paid at straight time rate.

6. Employes called in shall be paid four (4) hours if less than that number are worked; unless there is voluntary absence to be made up, hours worked on Saturday shall be paid at one and one-half ($1\frac{1}{2}$) rate and hours worked on Sunday shall be paid at double rate.

7. Furlough hours shall be circled and shall not be included in the addition of the time worked for the balance of the week. Deduction shall be made at the base rate per hour times the established hours per day if paid weekly. If paid monthly, use factors in par. 11.

8. Holiday hours shall be indicated at straight time when observed within the basic work week. Hours worked on a holiday shall be indicated at one and one-half ($1\frac{1}{2}$) rate.

9. Salary for the basic work week (less furlough time if any) shall be paid whether or not all voluntary absence has been made up.

[fol. 97] In United States District Court

Motion to Dismiss First Amended Complaint—Filed October 9, 1952

The defendant, Westinghouse Electric Corporation, by its attorney, Mahlon E. Lewis, moves this Honorable Court to dismiss the plaintiff's First Amended Complaint in the above entitled action for the following reasons:

1. The plaintiff is not the real party in interest within the meaning of Rule 17 of the Federal Rules of Civil Procedure and is therefore not a proper party plaintiff;

2. This Court lacks jurisdiction over the subject matter of the alleged cause of action; and

3. The First Amended Complaint fails to state a claim against the defendant upon which relief can be granted.

Mahlon E. Lewis, Attorney for Defendant.

In United States District Court

Opinion—Filed October 2, 1952

Marsh, *District Judge:*

Plaintiff is an unincorporated association and the collective bargaining representative for certain salaried employees of Westinghouse Electric Corporation, the defendant, at the latter's East Pittsburgh and Homewood, Pennsylvania, plants.

On November 19, 1951, plaintiff association filed a complaint to which was attached the collective bargaining [fol. 98] agreement effective between the parties as of November 1, 1950. The complaint alleges that under the terms of this agreement the defendant is obligated "to pay all of the employees [represented by the plaintiff] * * * their full monthly salary for the month of April, 1951, regardless of whether or not such employees missed a day's work during said month, * * *"; that the defendant refused to pay not less than 4,000 of said employees their full monthly

salaries "having deducted therefrom a proportionate amount attributable to absence from work on April 3, 1951"; and that the aggregate amount due and unpaid is not less than $45,000.00. Plaintiff prayed for judgment against the defendant corporation in that amount with interest and costs.

Jurisdiction is stated to be under Section 301 of Title III of the Labor Management Relations Act of June 23, 1947, 29 U.S.C.A. § 185.

The defendant filed a motion to dismiss on the following grounds: (1) that the plaintiff is not the real party in interest within the meaning of Rule 17, F.R.C.P., 28 U.S.C.A., and is therefore not a proper party plaintiff; (2) that the court lacks jurisdiction over the subject matter; (3) that the complaint fails to state a claim against the defendant upon which relief can be granted.

On the day fixed for hearing on the motion, the plaintiff filed a "First Amended Complaint," and the defendant renewed its motion to dismiss for the same reasons.

The amended complaint is substantially different from the original complaint. First, it states as an additional basis for jurisdiction the "Declaratory Judgment provisions of the Judicial Code, 28 United States Code, Sections [fol. 99] 2201 and 2202." Second, the plaintiff association in the amended complaint has added that it brings the action "in behalf of the individuals in interest whom it represents" as well as for itself "individually." It is alleged that the plaintiff is the collective bargaining agent for not less than 5,000 salaried employees at the defendant's plants aforesaid, engaged in an industry "affecting commerce," and that defendant failed and refused to pay not less than 4,000 of these employees their full monthly salaries by deducting a proportionate amount because of their absence from work on April 3, 1951. Third, in addition to averring a breach of the bargaining contract, it asserts that the defendant's failure and refusal to pay as aforesaid was in violation of the provisions of certain instruments, attached as exhibits, which were supplemental to and incorporated into the bargaining contract. Fourth, instead of asking judgment in favor of the association for $45,000.00 as set forth in the original complaint, it requests a judgment

"* * * against Defendant and in favor of Plaintiff interpreting the aforesaid contract and declaring the rights of the parties thereunder * * *; and to compel the Defendant to make an Accounting setting forth the individual names and amounts of unpaid salaries * * *; and to enter judgment against the Defendant and in favor of the individual employees set forth in paragraph 21 hereof, for the unpaid amount of their salaries, for the month of April 1951, together with interest from April 30, 1951, costs, and a reasonable attorney's fee."

The not less than 4,000 employees, allegedly absent from work on April 3, 1951, were not joined as parties plaintiff or named in the complaint.

[fol. 100] The defendant contends that the court does not have jurisdiction because these claims arise from "the individual employment contract rather than from the Collective Bargaining Contract," and that Section 301(a) of the Taft-Hartely Law gives jurisdiction to a federal court only in the event that the contract in suit was entered into between the employer and the labor organization as distinguished from an individual contract of hiring entered into between the employer and the individual employee. Defendant cites Milk Wagon Drivers Union, etc. v. Associated Milk Dealers, Inc., *et al.*, 42 F. Supp. 584 (D.C. N.D. Ill. 1941) and Joint Council Dining Car Employees, etc. v. New York Cent. R. Co., 7 F.R.D. 576 (D.C. N.D. Ill. 1946) in support of this theory. In the opinion of the court, this contention fails because the complaint under consideration is based exclusively upon the collective bargaining contract between the association and the corporation and not upon the contracts of hiring between the corporation and the individual employees.

We think that the situation *sub judice* is ruled by the case of American Federation of Labor v. Western Union Telegraph Co., 179 F. 2d 535 (C.A. 6, 1950). There the labor organization brought suit against the company upon a collective bargaining agreement which provided that a prior existing company pension plan should remain in full force and effect. The complaint alleged that the com-

pany refused to pay one Mae Hart, a retired employee, the pension to which she was entitled by the terms of the pension plan. It was held that the federal court had jurisdiction under the Taft-Hartley Law § 301(a), and, under the Declaratory Judgment Act, the company could be compelled to pay the pension to Mae Hart and to other retired [fol. 101] employees similarly situated.[1] The Court remanded the case to the district court for trial on the merits. We are unable to distinguish the instant case in principle from that precedent. See also Local 937, etc., *et al.* v. Royal Typewriter Co., 88 F. Supp. 669 (D.C. Conn. 1949);[2] United Shoe Workers of America v. Le Danne Footwear, Inc., 83 F. Supp. 714 (D.C. Mass. 1949). Therefore, we are constrained to deny the first two reasons advanced in the motion to dismiss as being without merit.

We assume, then, in considering the third reason to dismiss, that we have jurisdiction under Section 301(a) of the Taft-Hartley Law to construe the collective bargaining agreement here before us, and under the Declaratory Judgment Act to enforce the rights of the employees as they appear from its terms and provisions. It thus becomes necessary to examine this agreement in order to determine whether the complaint states a claim upon which relief can be granted.

The bargaining contract itself, which was dated November 1, 1950, and which appears as Exhibit "A" in both the original complaint and the amended complaint, does not in our opinion contain any covenant on the part of the cor-

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[1] Specific enforcement against the employer defendant does not seem to be prohibited by the Norris-LaGuardia Act, 29 U. S. C. A. § 52, 101 *et seq.* *Cf.* Textile Workers Union of America, C. I. O. v. Aleo Mfg. Co., 94 F. Supp. 626 (D. C. M. D. N. C., 1950) where the court held that the Norris-LaGuardia Act did not prevent the issuance of a mandatory injunction requiring employer to perform its collective bargaining agreement.

[2] In that case, as here, it seems that the union brought suit on behalf of employees who, we are reliably advised, were not identified by name as parties plaintiff in the caption and complaint.

poration to pay its employees for voluntary absences. This conclusion might be sufficient to dismiss the complaint on the authority of Bakery & Confectionery Workers I. U. v. [fol. 102] National Biscuit Co., 177 F. 2d 684 (C. A. 3, 1949).[3] But plaintiff contends that certain directions and interpretations contained in Exhibit "F", attached to the amended complaint, were incorporated into the 1950 bargaining contract, and that these directions and interpretations illustrate an intention and purpose of the corporation to pay employees for voluntary absences and were sufficient to impose upon it a contractual obligation to do so.

Exhibit "F" is entitled:

"Westinghouse Electric Corporation

Manual of Accounting and Industrial Relations Manual

Part 6—Industrial Relations Policies
and Accounting Procedures

Section 2

July 1949 Division 1G2"

Attached to this exhibit are certain examples and explanatory "Addenda" bearing the date of July, 1947. The sentence relied on appears in the "Addenda" as follows:

> "9. Salary for the basic work week (less furlough time if any) shall be paid whether or not all voluntary absence has been made up."

Another sentence in the "Addenda" is as follows:

> "1. Voluntary absences are indicated as time worked only for the number of scheduled daily hours less hours worked on Saturdays and Sundays which are not holidays."

These directions cannot be construed as constituting a covenant between the plaintiff and the defendant that the

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[3] The Court of Appeals affirmed the District Court, 78 F. Supp. 517, which had dismissed the action after construing the bargaining contract adversely to the contention of the union.

[fol. 103] latter shall pay its employees full salaries for voluntary absences, or, to put it another way, for days not worked regardless of the cause of absences. Expressly, they are instructions by the corporation to its accountants for determining the number of hours per week an employee worked and nothing more. The examples are entitled "Determination of Hours Worked," and the instructions imply that hours lost by voluntary absence shall be made up.

Moreover, contrary to the allegations of the complaint and the contention of plaintiff, these directions and the examples to which they refer, (all contained in Exhibit "F"), have not been "adopted and incorporated as a necessary and integral part of said contract" of 1950, "by reason and virtue of the provisions of paragraph H of Section VI" thereof.

Section VI, paragraph H(1) [4] by its terms is prospective in operation and in any event does not provide that instructions prepared by the corporation in 1947, 1949, or at any other time, shall be adopted and incorporated into the contract of 1950.

Plaintiff also argues that if the bargaining contract does not specifically provide for payment for voluntary absences, it is ambiguous and should be interpreted by the construction placed upon it by the corporation as disclosed by the above quoted sentences in Exhibit "F". It seems to us that the contract becomes ambiguous solely by reason of the arguments and assertions of the plaintiff on matters dehors the contract. In our opinion the terms of the contract between the corporation and the union are [fol. 104] pellucid concerning what type of absence shall be paid absences and what type shall not be paid. Payment for voluntary absences simpyl was not a subject of agreement between the union and the corporation in the 1950 contract and its supplements.[5]

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[4] Sections referred to are in the bargaining agreement, Exhibit "A", unless otherwise indicated.

[5] In this connection it is to be observed that this contract states at Section XVII, 3: "* * * that all agreements ar-

Neither can the omitted subject be supplied by alleged intentions gathered from custom, generosity or prior policy on the part of the corporation. Payment for work which is not performed is an important subject which calls for settlement by explicit agreement and not by judicial construction. *Cf.* Bakery & Confectionery Workers I. U. v. National Biscuit Co., *supra.* The parties themselves recognized the importance because they painstakingly inserted into the contract by way of specific terms the manner in which monthly salaries for all types of salaried employees represented by the association should be determined and paid.

It was provided in Section VI A(2) and Exhibit "C" that these salaries should be fixed between minimum and maximum rate ranges. The object and procedure for review of these salaries was prescribed in Section VI G. But it is also very plain that the parties did not contemplate that the rates of the monthly salaries should be rigid and inflexible whether the employee works or does not work—indeed the implications are very much to the contrary. [fol. 105] The contract sets forth detailed provisions for adding to the salary rate by extra payment for hourly overtime, Section XI, in excess of a 40 hour week based on an 8 hour day, from Monday to Friday, inclusive, Section VII; and by payment of a night turn bonus, Section VI E.

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rived at by the parties * * * are set forth in this Agreement * * *." And in Section III, 2, it is stated: "* * * that it is the responsibility and right of the Company to maintain discipline and efficiency, and agrees that Management shall have the *freedom of action* necessary to discharge its responsibility for the successful operation of the Company. These responsibilities and rights of the Company do not in any way limit any other *specific provision* of this Agreement [emphasis added]." To say the least, it is doubtful if a successful and efficient operation could be maintained by establishing a policy wherein over 4,000 employees shall be paid for those days they choose not to work. The contract gives the corporation the right to enforce attendance as its discretion dictates except as limited by a specific provision dealing with this subject.

Other provisions require deductions from the salary rate in case of furlough, Section IX 9, or leave of absence, Section VIII. The contract specifically requires the corporation to pay for days absent on account of jury duty, Section X 1; vacations, Section XIII; certain union activities, Section XVI B; extended illness or disability, Exhibit "D".

The fact that the parties included these specific provisions *in the contract* negates plaintiff's contention that the corporation from unclear extra-contractual considerations, instructions, and interpretations intended to obligate itself to pay for voluntary absences of one day. There would be no point in providing expressly for payment for certain absences if all were to be compensated.

One other matter remains to be considered and that is whether under the allegations of the amended complaint the plaintiff is entitled to relief. The amended complaint avers that on April 3, 1951, none of the employees concerned was absent on account of "furlough" or "leave of absence," but it does not assert that the approximately 4,000 employees were absent on April 3 because of some reason covered by a specific provision of the bargaining contract which requires the corporation to pay them for that day. We think that in order to state a cause of action it is incumbent upon plaintiff to bring each of the absent employees within the terms of the bargaining contract or its supplements and affirmatively and plainly aver that each was absent because of a reason requiring payment, such as [fol. 106] sickness,[6] and that the corporation refused to pay the increment of salary representing that day's absence. This the plaintiff has not done. The averment that plaintiff "has no actual records of * * * which of said em-

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[6] Plaintiff's counsel in his Supplemental Brief (page 8) argues that Exhibit "D", paragraph 1, provides "that in all cases of sickness for one day, no deduction from monthly salary is to be made." This construction we accept *arguendo* only, because to us the language seems to provide that certain weekly or monthly increments of salary will be paid to an employee who is absent for *extended* periods of time due to sickness or disability.

ployees were absent because of illness or disability" cannot be construed, as plaintiff's Supplemental Brief (at page 9) claims, as an affirmative averment that the not less than 4,000 employees were absent on April 3 because of sickness or disability.

Therefore, in the absence of affirmative averments of the specific causes of the absences of the employees on April 3, it may be assumed, as seems to be understood by both sides, that the approximately 4,000 absences were voluntary. As shown heretofore, it was not provided in the bargaining contract itself that employees should be paid for voluntary absences from work, but that the implications were to the contrary, and that it was not the intention or purpose of the corporation to obligate itself to that extent.

Accordingly, the complaint will be dismissed without prejudice to the plaintiff association by way of amendment to set forth a cause of action upon which relief can be granted.

[fol. 107] In United States District Court

Order Dismissing Complaint—Filed October 2, 1952

And now, to wit, this 2d day of October, 1952, It Is Ordered that the complaint in the above entitled action be and the same hereby is, dismissed, without prejudice to plaintiff by way of amendment to set forth a cause of action upon which relief can be granted.

Rabe F. Marsh, United States District Judge.

In United States District Court

Notice of Appeal—Filed October 29, 1952

Notice is hereby given that the Association of Westinghouse Salaried Employees, plaintiff above named, hereby appeals to the United States Court of Appeals for the Third Circuit, from the Order of the District Court of the United States for the Western District of Pennsylvania, entered in this action on October 2, 1952, dismissing the complaint.

Albert C. Shapira, Attorney for Appellant, 1208 Law & Finance Bldg., Pittsburgh 19, Pa.

[fol. 108] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10954

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Individually, and in Behalf of the Individuals in Interest Whom it Represents, Appellants,

vs.

WESTINGHOUSE ELECTRIC CORPORATION, Appellee

On Appeal from an Order of the District Court for the Western District of Pennsylvania

DESIGNATION—Filed December 30, 1952

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit.

Comes now the Association of Westinghouse Salaried Employees, individually, and in behalf of the individuals whom it represents, Appellants, and pursuant to Rule 24 of this Court, makes this designation of the portions of the record herein to be contained in the Appendix to its brief in the above-entitled proceedings:

1. Chronological list of Relevant Docket Entries.
2. All of the First Amended Complaint of Appellants, but [fol. 109] omitting sub-exhibits "B", "C", and "D" to Exhibit "E" of said First Amended Complaint.
3. The Decision of the District Court for the Western District of Pennsylvania.
4. The Order of the District Court for the Western District of Pennsylvania.

Albert C. Shapira, Counsel for Appellants.

[File endorsement omitted.]

[fol. 110] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10954

[Title omitted]

On Appeal from an Order of the District Court for the Western District of Pennsylvania

STIPULATION FOR EXTENSION OF TIME FOR FILING OF APPELLANT'S BRIEF—Filed January 7, 1953

And Now, to wit, this 30th day of December, 1952, it is stipulated by and between Counsel for the Association of Westinghouse Salaried Employees, individually, and in behalf of the individuals whom it represents, Appellants, and Westinghouse Electric Corporation, Appellee, that the time for the filing of Appellants' brief in the above-entitled case, shall be extended until January 26, 1953.

Albert C. Shapira, Counsel for Appellants. Mahlon E. Lewis, Counsel for Appellee.

Approved, Maris, J., January 7, 1953.

[File endorsement omitted.]

[fol. 111] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10954

[Title omitted]

AMENDED DESIGNATION—Filed January 8, 1953

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit.

Comes now the Association of Westinghouse Salaried Employees, individually, and in behalf of the individuals whom it represents, Appellants, and pursuant to Rule 24 of this Court, makes this amended designation of the por-

tions of the record herein to be contained in the Appendix to its brief in the above-entitled proceedings:

1. Chronological list of Relevant Docket Entries.
[fol. 112] 2. The First Amended Complaint of Appellants, to the following extent:

a. Pages 1 to 6 inclusive thereof.
b. Exhibit "A" attached thereto.
c. Exhibit "B" attached thereto.
d. Exhibit "C" attached thereto.
e. Exhibit "D" attached thereto.
f. The following parts of Exhibit "E" attached thereto:

(1) Page 1, line 1, to but not including "Recognition-Section I", etc.

(2) Page 3—the heading "Cooperation-Section III" only.

(3) Page 4, line 7 to line 17 inclusive.

(4) Page 5—from "Salaries-Section VI" to end of page 14.

(5) Page 15—the heading, "Seniority and Personnel Administration-Section VIII" only.

(6) Page 27—from "F. Furloughs", to but not including "G. Dismissals" etc.

(7) Page 32—from "K. Absence from Work" to but not including, p. 33, "2. Employees who find . ." etc.

(8) Page 33—from "Miscellaneous Procedures-Section IX" to end of page.

(9) Page 34—from "Overtime-Section X", to but not including page 40, "Bulletin Boards-Section XIII" etc.

[fol. 113] (10) Page 44—from "Payment for Negotiating Time-Section XV", but not including page 45, "D. The following shall be . . ." etc.

(11) Page 46—from "Modification-Section XVI", to but not including page 47, "D. Either party to this agreement . ." etc.

(12) Page 51—the boxed-in Note.

g. Exhibit "F" attached thereto, but excepting sub-exhibits "B", "C" and "D" to said Exhibit "F".

3. Motion of Defendants to Dismiss First Amended Complaint.
4. Decision of the District Court for the Western District of Pennsylvania.
5. Order of the District Court for the Western District of Pennsylvania.
6. Notice of Appeal by Plaintiffs.

Albert C. Shapira, Counsel for Appellants.

[File endorsement omitted.]

[fol. 114] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,954

[Title omitted]

On Appeal from an Order of the District Court for the Western District of Pennsylvania

STIPULATION FOR EXTENSION OF TIME FOR FILING OF APPELLANTS' BRIEF—Filed January 22nd, 1953

And Now, to wit, this 21st day of January, 1953, it is stipulated by and between Counsel for the Association of Westinghouse Salaried Employees, individually, and in behalf of the individuals whom it represents, Appellants, and Westinghouse Electric Corporation, Appellee, that the time for the filing of Appellants' brief in the above-entitled case, shall be extended from January 26, 1953 to January 29, 1953.

Albert C. Shapira, Counsel for Appellants; Mahlon E. Lewis, Counsel for Appellee.

Approved: Goodrich, J., Jan. 22, 1953.

[File endorsement omitted.]

[fol. 115] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,954

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Individually and in Behalf of the Individuals Whom it Represents, Appellant,

vs.

WESTINGHOUSE ELECTRIC CORPORATION

Present: Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges.

ORDER FOR REARGUMENT—Filed September 30th, 1953

It is hereby Ordered that the above-entitled case be reargued before the court en banc.

By the Court, Kalodner, Circuit Judge.

[File endorsement omitted.]

[fol. 116] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,954

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Individually, and in Behalf of the Individuals in Interest Whom it Represents, Appellant,

v.

WESTINGHOUSE ELECTRIC CORPORATION

On Appeal from the United States District Court for the Western District of Pennsylvania

Argued April 23, 1953

Reargued December 22, 1953

Before Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges

OPINION OF THE COURT—Filed January 28, 1954

By STALEY, Circuit Judge:

Plaintiff appeals from the district court's dismissal of its complaint. We assume the truth of all the factual allegations, which are as follows:

Plaintiff, an unincorporated labor organization, is the bargaining representative of a large group of defendant's salaried employees. Some four thousand of these employees did not work on a certain day in April of 1951, [fol. 117] and, as a consequence, defendant did not pay them for that day. Asserting that defendant's failure to pay was violative of the collective bargaining agreement then in effect between it and defendant, plaintiff seeks, on its amended complaint, a declaratory judgment as to the rights of the parties under the agreement, an accounting to determine the amounts of the allegedly wrongfully withheld salaries, and a judgment running in favor of the individual employees found to be entitled thereto. Defendant presented three grounds for its motion to dismiss: lack of jurisdiction over

the subject matter; wrong party plaintiff; and failure of the complaint to state a claim upon which relief could be granted. The district court decided the first two contentions in plaintiff's favor but dismissed the complaint on the basis of the third.[1] We agree with that result but think that the dismissal should be put upon the ground of lack of federal jurisdiction over the subject matter.

There is no diversity jurisdiction here. Plaintiff relies solely upon the grant of federal power in Section 301(a) of the Labor Management Relations Act:

> "Suits by and against labor organizations—Venue, amount, and citizenship.
>
> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 61 Stat. 156 (1947), 29 U. S. C. A. § 185(a) (Supp. 1952).

It is plaintiff's theory that the proper construction of the collective bargaining contract requires that defendant [fol. 118] pay the salaried employees regardless of the fact that they did not work and that that provision, though it is in a contract to which only the union and the company were parties, runs to the benefit of each individual salaried employee in the bargaining unit. Since the union entered into the collective bargaining contract for the benefit of those whom it represents, the argument cont' nes, it may sue in federal court by virtue of Rule 17(a)[2] of the Federal

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[1] The opinion of the district court appears at 107 F. Supp. 692 (W. W. Pa. 1952). The dismissal was without prejudice to plaintiff's amendment of the complaint to set forth a cause of action upon which relief could be granted.

[2] "Every action shall be prosecuted in the name of the real party in interest; but . . . a party with whom or in whose name a contract has been made for the benefit of

Rules of Civil Procedure or by virtue of Section 301(b) [3] of the Labor Management Relations Act.

Plaintiff goes too fast, however. Skipping rather lightly over the question of the power of the federal court to act in this case, it expends its strength on the issue of proper party plaintiff. Plaintiff might well be the proper party to assert the present claim (which we do not decide) but nevertheless be unable to find a federal forum with power to hear it. A correct solution of this problem, therefore, requires a construction of Section 301(a) and some fundamental probing into the reciprocal rights and duties, and the sources thereof, of the three groups concerned in a collective bargaining contract.

Section 301(a) is a grant of federal-question jurisdiction and thus creates a federal, substantive right. Shirley-Herman Co. v. International Hod Carriers, 182 F. 2d 806 (C. A. 2, 1950); 3 Moore's Federal Practice § 17.25 (2d ed. 1948). The contract allegedly violated, however, must be one between an employer and a labor organization. Shirley-Herman Co. v. International Hod Carriers, *supra*. That is, we construe the "between" clauses as modifying "contracts" rather than "suits." [4]

[fol. 119] We now turn to an analysis of what happens when a union enters into a collective bargaining contract with an employer and the latter then enters into a contract of hire with an individual employee, in order to determine whether the right here asserted arises from a violation of the collective contract, for if it does not, there is no jurisdiction to entertain this suit. Plaintiff admits that the rights in dispute are the claims of individual employees to their

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another . . . may sue in his own name without joining with him the party for whose benefit the action is brought. . . ."

[3] ". . . Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. . . ." 61 Stat. 156 (1947), 29 U. S. C. A. § 185(b) (Supp. 1952).

[4] But see the contrary construction suggested in Note, 57 Yale L. J. 630, 637 (1948), and in 17 A. L. R. 2d 614, 619 (1951).

salaries. It argues, however, that these individual employees whom it represents are third party beneficiaries of the collective bargaining contract between it and the employer. Thus, though not parties to that contract, it would follow that their rights arise out of it, and the present claims would be based upon a violation of a contract between an employer and a labor organization. Hence, federal jurisdiction under Section 301(a).

We concede that the matter is not free from difficulty, but we think plaintiff's analysis is too superficial. The cases explaining the tripartite relations raised by a collective bargaining contract are quite conflicting, but examination reveals that four rather well defined theories emerge. At one time the view was accepted that a collective bargaining contract was binding only in morals.[5] No more need be said about that. A second and more generally accepted view is that the collective agreement establishes a usage in the plant or industry and that the individual hiring contracts are made with that usage in mind, thus incorporating within the latter the terms of the former.[6] Under this view whatever rights and duties arise are created by the individual contracts of hire. A third theory is that the union, in contracting with the employer, acts as agent for those whom it represents.[7] Thus, the rights and duties arise out of the collective bargaining contract. [fol. 120] Another analysis holds that the union, in contracting with the employer, does so for the benefit of those employees whom it represents and that they are thus third party beneficiaries of the terms of the collective bargaining contract.[8] This is the theory pressed upon us here.

None of the above theories, however, presents an ade-

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[5] Teller, Labor Disputes and Collective Bargaining § 157 (1940).

[6] Harrison v. Pullman Co., 68 F. 2d 826 (C. A. 8, 1934); Yazoo & M. V. R. R. v. Webb, 64 F. 2d 902 (C. A. 5, 1933); Teller, *op. cit. supra*, note 5, § 159; 2 Williston, Contracts § 379A (rev. ed. 1936).

[7] Teler, *op. cit. supra*, note 5, § 167 and cases there cited.

[8] Teller, *op. cit. supra*, note 5, § 168; 2 Williston, *op. cit. supra*, note 6.

quate explanation of the collective bargaining picture,[9] although certain features of each are valid. We prefer an eclectic theory. It is perfectly obvious that the collective contract between the union and the employer is not a contract of hire.[10] ". . . [N]o one has a job by reason of it

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[9] The usage theory would seem to be unrealistic in that it must view the collective agreement as not a contract at all. Hence, the union, representing the collective force of the employees, would have no rights. Moreover, how notorious must the "usage" be in order that it become part of the employment contract? Must the employee actually know of its existence? *Cf.* United States Daily Publishing Corp. v. Nichols, 32 F. 2d 834 (C. A. D. C. 1929).

The agency theory is unable to explain how an employee who is not a member of the union acquires any rights under the collective contract.

Under the third party beneficiary theory, the employee need not show that he contracted with reference to the collective contract; nor need the employee be identified at the time of the collective contract. But that theory leaves the employer without recourse against the employee, since the latter, the beneficiary, had made no promises. Furthermore, how does the third party beneficiary theory have any effect in jurisdictions which do not follow the rule of Lawrence v. Fox, 20 N. Y. 268 (1859)?

The cases illustrating the various theories and results are collected in 18 A. L. R. 2d 352 (1951) and 95 A. L. R. 10 (1935).

[10] In litigation under the United States Arbitration Act, 9 U. S. C. § 1 *et seq.*, collective bargaining contracts have been held to be "contracts of employment." Tenney Engineering, Inc. v. United Electrical R. & M. Workers, 207 F. 2d 450 (C. A. 3, 1953); Pennsylvania Greyhound Lines, Inc. v. Amalgamated Ass'n, 193 F. 2d 327 (C. A. 3, 1952); Amalgamated Ass'n v. Pennsylvania Greyhound Lines, Inc., 192 F. 2d 310 (C. A. 3, 1951); International Union v. Colonial Hardwood Flooring Co., 168 F. 2d 33 (C. A. 4, 1948); Gatliff Coal Co. v. Cox, 142 F. 2d 876 (C. A. 6, 1944). That definition, however, was put upon policy reasons peculiar to the Arbitration Act which have no place in the present setting.

and no obligation to any individual ordinarily comes into existence from it alone." J. I. Case Co. v. National Labor Relations Board, 321 U. S. 332, 335 (1944). The collective contract between the union and the employer establishes the rates of pay, wages, hours, and conditions to which the employer must adhere in concluding contracts of hire with individual employees. Indeed, Mr. Justice Jackson, in the [fol. 121] J. I. Case case, *supra*, likens the collective contract to tariffs established by a carrier, standard provisions prescribed for insurance policies, or utility schedules of rates and rules for service. These do not of themselves create rights or duties between carrier, insurer, or utility and shipper, insured, or customer. Such rights and duties arise only when carrier and shipper, insurer and insured, utility and customer enter into contracts with each other. So it is in the shop. The collective contract plus the National Labor Relations Act binds the employer to include in the contract of hire which he may conclude with each individual employee in the bargaining unit the precise terms and conditions that have been set up by it. By this we do not mean to follow the usage theory of the collective bargain. Under familiar principles of contract law, the parties must know or have reason to know of the usage and deal with reference to it in order that its terms may become part of their contract. Restatement, Contracts § 247, comment *b* (1932). Such a requirement has little place in the elaborate statutory scheme which presently rules labor relations. The bargaining representative is made the sole agent for the unit and represents not only its members but all employees in that unit whether members of the union or not. The terms of the collective contract thus become part of the individual contract of employment, not because of consensual acts of the employer and employee, but because the law says so no matter how those parties may feel about the matter. J. I. Case Co. v. National Labor Relations Board, *supra* at 336. Applying those principles to our case and assuming that plaintiff's construction of the collective contract is correct, we see that by that contract and the labor relations Act defendant became bound to the plaintiff to include as a term of each individual contract of hire a promise to pay the salaried employee for the type of ab-

sence involved here. But not until an individual entered [fol. 122] into a contract of hire with defendant did the latter become bound to pay that individual under such circumstances, and, if defendant failed to so pay, it breached, not its collective contract with the union, but its contract of hire with that individual employee. Joint Council Dining Car Employees v. New York Central R .R., 7 F. R. D. 376 (N. D. Ill. 1946); Milk Wagon Drivers Union v. Associated Milk Dealers, 42 F. Supp. 584 (N. D. Ill. 1941). See also Knudsen v. Chicago & N. W. Ry., 106 F. Supp. 48, 52 (N. D. Ill. 1952). Consequently, we think that, if there was a violation of contract here, it was a violation of the individual employment contract and, thus, there is no federal jurisdiction since Section 301(a) cannot be invoked.

Plaintiff tells us that the third party beneficiary theory is the modern one, citing the J. I. Case case, *supra*, among others. It is true that the Court wrote at 321 U. S. 332, 336, "But, however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement, even if on his own he would yield to less favorable terms." However, Mr. Justice Jackson there also pointed out very clearly that there are two contracts involved the collective one between union and employer and the individual one between employer and employee, and that there is an obvious difference between them in both concept and function. We think the J. I. Case case means that the individual employee is a third party beneficiary of the collective bargaining contract only in the sense that the collective force of all employees in the unit has been brought to bear upon the employer to hammer out a bargain with him, the terms of which, by virtue of the statutory mandate, must be included in the employee's contract of hire, but that that provision of the collective contract specifying rates of pay ripens into a legal right only under the individual contract of hire and only because of the individual employee's labor. We think that this recognizes the functional difference [fol. 123] between a collective bargaining contract and a contract to buy and sell a horse, and yet remains reasonably consistent with accepted doctrine. Indeed, it could hardly be seriously contended that the collective contract can be

fitted into traditional third party beneficiary standards. To begin with, there are some provisions of the collective contract which run only to the benefit of the union and could not run to the benefit of the individual employee. Check-off provisions are probably the outstanding example. Furthermore, the consideration for the employer's duty to pay wages to any individual employee is furnished by the latter, the would-be beneficiary, rather than by the union, the would-be promisee.

The collective contract is made up of a whole complex of clauses which deal with nearly every phenomenon under the industrial sun. The ordinary collective contract may contain detailed provisions relating to union shop or maintenance of membership, hours of work, wages, overtime, holidays, vacations, shift scheduling, leaves of absence, seniority, promotion, transfer, demotion, layoff, discharge, discipline, grievance procedure, arbitration, strikes, lockouts, runaway shop, and safety conditions. The collective contract in this record includes many of those terms. We think that a realistic view of the problem requires that analysis be directed to the possible rights and duties arising out of the specific term of the collective contract that is in dispute rather than attempting to categorize it as a whole. Considered as a whole, it is *sui generis* and simply will not fit into any of the traditional legal pigeonholes. The claim asserted here is the right to wages. The employer has a duty to pay wages only because the individual employee performed his work, not because the union promised to refrain from certain acts. On the other hand it may well be that there are terms of the collective contract which may be of benefit to the employee but this only incidental to a collective benefit, as opposed to the direct benefit to the individual of his right to his wages. By way of illustration of duties imposed upon the employer by virtue of the col- [fol. 124] lective contract itself and correlative rights running in favor of the collective group, *i. e.*, the union, with incidental benefit to the individual, may be mentioned provisions relating to lockout, union shop, runaway shop, arbitration, and safety conditions. We think it is the union's promises which furnish consideration for those employer

promises and, thus, those rights arise out of the collective contract and, therefore, run in favor of the union.[11]

Plaintiff leans heavily upon American Federation of Labor v. Western Union Telegraph Co., 179 F. 2d 535 (C. A. 6, 1950). See also Food & Service Trades Council v. Retail Associates, Inc., 115 F. Supp. 221 (N. D. Ohio 1953). In the former case, the Sixth Circuit held that there was federal-question jurisdiction under Section 301(a) to entertain a suit by the union for the company's refusal to pay a pension to one of its employees. To the extent that that case holds that an individual employee's right to a pension, which is simply another form of wages, arising out of the collective contract rather than the hiring contract, we are, with deference, forced to disagree.

There are cases under Section 301(a) where a union was allowed to assert a claim somewhat similar to the present one, *i. e.*, one which we would consider as arising out of the individual contract of hire.[12] In all but two of those cited, however, the question of federal jurisdiction was passed *sub silentio*, so that they are not binding precedent on the issue of jurisdiction. United States v. L. A. Tucker Truck Lines, Inc., 344 U. S. 33, 38 (1952). In the other two cases there were mere *ipse dixit* statements concerning [fol. 125] federal jurisdiction, and in the case in the Tenth

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[11] MacKay v. Loew's, Inc., 182 F. 2d 170 (C. A. 9), cert. denied, 340 U. S. 828 (1950); Dubinsky v. Blue Dale Dress Co., 162 Misc. 177, 292 N. Y. Supp. 898 (Sup. Ct. 1936). See also Textile Workers Union v. American Thread Co., 113 F. Supp. 137 (D. Mass. 1953).

[12] Mercury Oil Refining Co. v. Oil Workers International Union, 187 F. 2d 980 (C. A. 10, 1951) (the employee was a co-plaintiff); Bakery & Confectionery Workers' International Union v. National Biscuit Co., 177 F. 2d 684 (C. A. 3, 1949); Local 793 v. Auto Specialties Mfg. Co., 19 CCH Lab. Cas. Par. 66,162 (W. D. Mich. 1951); United Automobile Workers v. Wilson Athletic Goods Mfg. Co., 18 CCH Lab. Cas. Par. 65,867 (N. D. Ill. 1950); Local 937 v. Royal Typewriter Co., 88 F. Supp. 669 (D. Conn. 1949); United Shoe Workers v. Le Danne Footwear, 83 F. Supp. 714 (D. Mass. 1949).

Circuit the employee was a co-plaintiff who could rely on his individual contract of hire.

It may not be amiss to point out some of the serious questions which might be raised by a contrary decision on this issue. Plaintiff admits that the rights asserted are the individual rights of some four thousand employees. None of them are joined or even named. Indeed, part of the relief sought is the names of those entitled to payment. In such circumstances, how should the doctrine of res judicata be applied? If plaintiff should prevail on the merits, what of an employee in the unit who may have been inadvertently omitted from the reckoning? Is he barred? Is defendant safe in paying the judgment in favor of plaintiff? If plaintiff should lose on the merits, as it did in the district court, are all employees in the unit barred?[13] Plaintiff argues that the employee is a third party beneficiary of the collective contract. Plaintiff is not asserting its right as alleged promisee to that contract, however, but, in a representative capacity, asserts the rights of the alleged beneficiaries. Thus, it seems they would be barred at all events, since the rules of res judicata as applied to the *cestuis* of representative suits would apply.[14] Since the rights asserted here are no longer executory, in that the employees have performed the work which raised in defendant the duty to pay, we think it a factor to be considered that the employees might be thus cut off.

A further problem is created by the effect of those cases which have said that the union is the only proper party to any suit under Section 301(a).[15] If those cases are right,

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[13] See Rock Drilling etc. Local Union No. 17 v. Mason & Hangar Co., 90 F. Supp. 539 (S. D. N. Y. 1950).

[14] Restatement, Judgments § 85(1) (1942).

[15] United Protective Workers of America v. Ford Motor Co., 194 F. 2d 997 (C. A. 7, 1952); Ketcher v. Sheet Metal Workers' International Ass'n, 115 F. Supp. 802, 809 (E. D. Ark. 1953); Local 793 v. Auto Specialties Mfg. Co., 19 CCH Lab. Cas. Par. 66,162 (W. D. Mich. 1951); United Automobile Workers v. Wilson Athletic Goods Mfg. Co., 18 CCH Lab. Cas. Par. 65,867 (N. D. Ill. 1950); Schatte v. Inter-

[fol. 126] then the federal courts are closed to suits by employees to recover wages. This would make the union not only the exclusive agent to negotiate a contract but also the exclusive agent to litigate the individual rights of all those whom it represents under the labor relations Act, whether members of the union or not. We think that if Congress had intended such revolutionary changes, it would have said so in so many words. Couple this with the holding by the Supreme Court of New York that Section 301(a) shows Congressional intent to preempt the field relating to collective bargaining contracts in interstate commerce, Fitzgerald v. Dictograph Products, Inc., 28 LRRM 2611 (1951),[16] and the individual employee is completely out of court. Thus would be taken away the right of the employee to his salary. Everybody admits that it is his individual right and not that of the union. To say that he has a right to his salary but no remedy to enforce it is a judicial nightmare. " 'Legal obligations that exist but cannot be enforced are ghosts that are seen in the law but that are elusive to the grasp.' " De La Rama Steamship Co. v. United States,

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national Alliance, 84 F. Supp. 669, 673 (S. D. Cal. 1949), aff'd on other grounds, 182 F. 2d 158 (C. A. 9), cert. denied, 340 U. S. 827 (1950).

[16] See also Fay v. American Cystoscope Makers, Inc., 98 F. Supp. 278, 281 (S. D. N. Y. 1951).

On the question whether Section 301 has made the federal courts the exclusive forum to determine cases involving collective bargaining contracts between employers and labor organizations representing employees in an industry affecting commerce, it is significant that in the tort section of the Labor Management Relations Act, Section 303, in the jurisdictional grant, Congress said that the party injured by the proscribed conduct "may sue therefor in any district court of the United States . . . *or in any other court having jurisdiction of the parties* . . ." (Emphasis added.) § 303(b). There is no such choice of forums under Section 301, seemingly indicating that Congress intended to preempt to the federal courts litigation on collective bargaining contracts. *But see* General Electric Co. v. International Union, 21 U. S. L. Week 2136 (Ohio Ct. App., September 8, 1952).

344 U. S. 386, 390 (1953). This would raise such serious doubts as to the constitutionality of Section 301(a), Lynch v. United States, 292 U. S. 571, (1934), as to require us to avoid such construction. Interstate Commerce Commission v. Oregon-Washington R. R. & Navigation Co., 288 U. S. 14, 40 (1933); United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 82 (1932).

[fol. 127] In summary, we hold that the employer's duty to pay a certain rate arises out of the collective bargaining contract plus the sanctions of the labor relations Act. The duty to pay a particular employee wages in the sum resulting from such rate arises out of the individual contract of hire. The latter is the duty alleged here, and, therefore, Section 301(a) is not involved since there is no violation of a contract between an employer and a labor organization. Consequently, we have no jurisdiction over the subject matter. For the same reason the prayer for declaratory relief as to the meaning of this term of the collective contract must meet a like fate.

The order of the district court will be vacated, and the complaint will be dismissed for lack of jurisdiction.

HASTIE, Circuit Judge, dissenting:

The complaint in this case was dismissed in the district court on the defendant's motion which advanced three contentions: (1) that the matter in controversy was not within federal jurisdiction, (2) that the complaining labor union was not the proper party to maintain the suit, and (3) that the claim on its face was without merit. The district court thought that the third objection, and only that one, was meritorious. This court now decides that the first objection was well taken and accordingly vacates the judgment and orders the cause dismissed for lack of federal jurisdiction. However, I think the district court ruled correctly on all three points raised by the motion and that its judgment should be affirmed.

The first question is whether Section 301(a) of the Labor-Management-Relations Act, 29 U. S. C. § 185(a) 1946 ed., Supp. V, which confers upon federal district courts jurisdiction of "suits for violation of contracts between an employer and a labor organization representing employees

[fol. 128] in an industry affecting commerce . . ." is applicable to this controversy. This action is *ex contractu.* The adequate involvement of commerce is unquestioned, but the rights asserted as the basis of relief are beneficially the alleged several rights of a great number of defendant's employees to receive a day's pay for a day on which they did not work. The company argues that its refusal to pay these employees, if actionable at all, must be attacked as a breach of the individual contracts of hire, a matter beyond federal cognizance. *Cf. Christiansen v. Local 680,* 1940, 126 N. J. Eq. 508, 10 A. 2d 168. This court now accepts that reasoning, treating as decisive the undeniable fact that the obligation to pay any particular workman in accordance with the union contract depends upon his individual hiring as well as the collective bargain. I believe the court does not regard the time sequence of these contracts as consequential. I agree that this dual contracting shows that the individual workman can found a common law action for pay upon the terms of his employment without even attempting to make the matter one of federal cognizance under Section 301(a). But in the present circumstances I think the existence of this individual common law right does not prevent the refusal to pay from also being a violation of the collective bargaining agreement and, as such, within federal jurisdiction as extended by Section 301(a).

The union's complaint asserts that its collective bargaining contract with the defendant, as properly construed and mutually understood, obligates the employer to compensate its employees for the period of absence in suit. It is the union's position that, although the employment status of each individual arises out of his hiring, certain of his rights as an employee, including the right in suit, are the legal consequences of undertakings embodied in the collective bargaining contract as enforceable promises of the employer made to the union for the benefit of all who may be employees while the collective bargain remains in force. [fol. 129] This reasoning reflects the analysis made by Mr. Justice Jackson in *J. I. Case Co. v. National Labor Relations Board,* 1944, 321 U. S. 332, 335-6: "After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings. . . . But the terms of the employment already have been traded out.

There is little left to individual agreements except the act of hiring. . . . The individual hiring contract is subsidiary to the terms of the trade agreement. . . ." I think such analysis is realistic. In terms of the matter presented in this complaint, individual hiring is "subsidiary" to the collective agreement in which the parties addressed themselves to and "traded out" that term of employment which controls pay status on non-working days. Accordingly, it seems proper to say that the asserted right to relief is so predicated upon a violation of the contract between employer and union that the controversy comes within federal jurisdiction as conferred by Section 301(a) of the Labor-Management-Relations Act. *American Federation of Labor v. Western Union Telegraph Co.*, 6 Cir. 1950, 179 F. 2d 535; *Bakery & Confectionery Workers Union, Local No. 492 v. National Biscuit Co.*, 3 Cir. 1949, 177 F. 2d 684; *Mercury Oil Refining Co. v. Oil Workers International Union*, 10 Cir. 1951, 187 F. 2d 980.

My view of the first point makes it necessary that I consider the distinct, though related, question whether the union, without joining individual employees, is a proper party to assert and litigate the present claim. Section 301(a) gives the district court jurisdiction over violations of collective bargaining contracts but does not indicate who may sue on the various claims which may arise out of such contracts. The answer to that question must be found elsewhere.

The employer says the union alone cannot maintain this action because the rights asserted, even if they derive from the collective bargaining agreement, are beneficially the individual rights of the employees who were denied compen- [fol. 130] sation. *Cf. Milk Wagon Drivers Union, Local No. 753 v. Associated Milk Dealers*, N. D. Ill. 1941, 42 F. Supp. 584. The union counters with the contention that Rule 17(a) of the Federal Rules of Civil Procedure and Section 301(b) of the Labor-Management-Relations Act enable it to sue alone to realize the benefits it has won for all the employees.

It seems to me that Rule 17(a) is relevant. That Rule explicitly states that "Every action shall be prosecuted in the name of the real party in interest; but . . . a

party with whom or in whose name a contract has been made for the benefit of another, . . . may sue in his own name without joining with him the party for whose benefit the action is brought; . . ."

In a variety of situations this Federal Rule and its state prototypes [1] have served to enable the maker of a contract for the benefit of another to sue in his own name to vindicate the beneficiary's rights. See *Valentine* v. *Powers*, D. Nebr. 1948, 85 F. Supp. 732, *Linneman* v. *Kirchner*, 1920, 189 Ia. 336, 178 N.W. 899; *Shellberg* v. *McMahon*, 1916, 98 Kans. 46, 157 Pac. 268; *Millers Nat'l. Ins. Co.* v. *Bunds*, 1944, 158 Kans. 662, 149 P.2d 350. A union's effort to enforce the rights it has obtained for the shifting membership of a class it represents through a contract that it made in their interest seems a very appropriate occasion for such procedure. *Local 793 UAW-CIO* v. *Auto Specialties Mfg. Co.*, D. Mich., 1951, 19 CCH Lab. Cas. Par. 66,162; *Local 937 UAW* v. *Royal Typewriter Co., Inc.*, D. Conn. 1949, 88 F. Supp. 669; *Cf. Amalgamated Meat Cutters and Butchers*, [fol. 131] *Local 634* v. *Safeway Stores, Inc.*, Denver, Colo. Dist. Ct. 1949, 16 CCH Lab. Cas. Par. 65,044.

The opinion of the court quite properly points out that present professional views of the jural relationships which grow out of collective bargaining contracts are various and unsettled, and that in the circumstances an eclectic ap-

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[1] Some states have provisions like the Federal Rule. Others approximate this language:

"Every action shall be prosecuted in the name of the real party in interest, but . . . trustee of an express trust, . . . may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom or in whose name a contract is made for the benefit of another is a trustee of an express trust within the meaning of this section." See 3 Moore, Federal Practice, 2d ed., 1371-72.

Whether expressed in the one form or the other, the result is the same: a person who enforces a contract made in his name for the benefit of another enforces rights belonging to another and, where allowed a money judgment, holds any proceeds recovered in a fiduciary capacity.

proach to the possibilities of the situation is warranted. But going at the problem this way it seems to me that the employer as promisor in the collective contract is in no position to complain that his promise is enforced by the one to whom it was given. And it seems entirely fair to the individual employee that Rule 17(a) be employed according to its tenor to permit his exclusive representative for the making of a contract for his benefit without his personal participation,[2] to proceed similarly on its own initiative to obtain for his benefit a judicial determination of the rights the contract gives him. In this type of statutory relationship and representative status the courts have taken care to protect the individual employees by imposing upon the union, quite apart from Rule 17(a), a strict and high fiduciary obligation of diligence and fairness in advancing the interests of all those it represents. *Brotherhood of Railroad Trainmen* v. *Howard*, 1952, 343 U.S. 768; see *Ford Motor Co.* v. *Huffman*, 1953, 345 U. S. 337, 338.

If in this process the union should succeed in winning, as it sought here, a judicial determination establishing the alleged right of all employees under the collective bargaining contract to be paid for days of voluntary absence, the question would remain whether any money judgment could properly be rendered without joinder or intervention of individual beneficiaries. Some of the above cited cases go that far, treating the plaintiff maker of a third party beneficiary contract as a fiduciary who may obtain a money [fol. 132] award for distribution among the beneficiaries. It is not necessary to pass upon that issue here because the district court rightly concluded that the contract in suit did not create such an obligation as the union asserts in this suit. And since the majority does not reach this point at all, I express no opinion on the matter of neces-

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[2] While neither party argues the point, the pleadings indicate to us that the union as the chosen bargaining representative of the employees concerned here is the exclusive statutory representative of the class for bargaining "in respect to rates of pay, wages, hours of employment or other conditions of employment . . ." as provided in Section 9(a) of the National Labor Relations Act, as amended, 61 Stat. 143, 29 U. S. C. § 159(a) 1946 ed., Supp. V.

sary parties beyond saying that the union suing alone can obtain an effective declaration of the rights and obligations created by the collective bargaining contract, including any created for the benefit of the workmen as individuals.

Coming finally to the merits, I agree with the District Court that the facts alleged do not entitle the plaintiff or the employees it represents to relief. The complaint asserts that an obligation to compensate employees for the day in controversy when they were absent from work is imposed on defendant by the collective bargaining contract which it made with the union November 1, 1950. At the same time the complaint does not state why the employees were absent except that they were not "furloughed" or on "leave of absence", these being two situations of extended absence in which the contract makes it clear that an employee is not entitled to pay. Thus, it necessarily is the theory of the complaint that the contract requires that an employee, not on furlough or leave of absence, must be paid for every day when he voluntarily stays away from work, for whatever reason, just as if he were on the job.

But this claim is based on misconstruction of the contract. That instrument formally establishes a standard basic forty hour, five day work week upon which rates of pay are determined. It also contains a comprehensive enumeration of the absences, both normal and unusual, which the employer must credit toward the forty hour work week just as if the employee were working. Specifically, for employees who have worked more than one year the contract provides annual vacation of two or three weeks without loss of pay. Certain holidays are similarly to be credited as work time. Absences for jury duty and for [fol. 133] certain union activities are authorized without loss of pay. Sick leave is covered by a separate written contract. Thus I think it clear that what the parties intended and accomplished was to cover by specific agreement each type of absence which should be compensable. Accordingly, there is no provision whatever stipulating any particular circumstance in which absence for a single day or any other short period is not compensable. None need be stated since all compensable absences are enumerated. The references to extended absence without pay in the nature of temporary reduction of force, called "furlough", and to

extended absence without pay at the employee's own request, called "leave of absence", are made in connection with an important statement of the agreed seniority status of employees thus temporarily removed from the payroll. There was need to mention this type of absence not because of uncertainty as to pay status but to clarify seniority rights.

I think, as did the District Court, that the contract is clear in its intendment that the absent employees are entitled to pay for the days in suit only if they allege and prove that the situation is within one of the enumerated categories—vacation, holiday, sick leave, jury duty, or negotiating time.

Only brief comment will be made on one other theory of liability urged by the union. It is said that the 1950 contract incorporated certain alleged earlier understandings concerning compensation for periods of voluntary absence. The answer is two-fold. As already shown, the formal agreement is detailed and comprehensive in its enumeration of the circumstances in which there is to be pay for voluntary absence. Moreover, it contains this provision:

> "This Agreement expresses the understanding of the parties in respect to matters deemed by them to be Company-wide and . . . it will not be changed, modified or varied except by a written instrument signed by duly authorized agents of the parties hereto, . . ."

[fol. 134] This suit attempts to "change, modify or vary" the terms of the formal agreement. And the only provision of the contract which defendant points out as containing any possible sanction for the modifying incorporation of any past understanding in the 1950 agreement is in fact, as the District Court pointed out, a prospective reference in subsection H of section VI to interpretations which may be agreed upon in the future. There is nothing in the 1950 contract which makes it either necessary or appropriate to read into it any alleged prior understanding about paying for periods of voluntary absence.

It is my view that the judgment should be affirmed.

I am authorized to state that Chief Judge Biggs and Circuit Judge Kalodner join in this dissent.

A true Copy. Teste:

——, Clerk of the United States Court of Appeals for the Third Circuit.

[fols. 135-136] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,954

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Individually, and in behalf of the individuals in interest whom it represents, Appellant,

vs.

WESTINGHOUSE ELECTRIC CORPORATION

On Appeal from the United States District Court for the Western District of Pennsylvania

Present: Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges.

JUDGMENT—Filed January 28, 1954

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby vacated, and the complaint dismissed for lack of jurisdiction; costs to be taxed against the appellant, Association of Westinghouse Salaried Employees, and in favor of appellee, Westinghouse Electric Corporation.

[File endorsement omitted.]

[fol. 137] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 132] SUPREME COURT OF THE UNITED STATES

No. 725, October Term, 1953

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES,
Petitioner,

vs.

WESTINGHOUSE ELECTRIC CORPORATION

ORDER ALLOWING CERTIORARI—Filed June 7, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.